IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

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| UNITED STATES OF AMERICA | . CASE NO. 5:16-CR-4-1BO |
| | . ELIZABETH CITY, NC |
| V. | . APRIL 27, 2016 |
| | . |
| HEMZA LEFSIH | . |
| . . . . . . . . . . . . . . . . . | . |

JURY TRIAL
BEFORE THE HONORABLE TERRENCE W. BOYLE
JUDGE, UNITED STATES DISTRICT COURT

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ARRAIGNMENT

**THE COURT:** How does the defendant plead to Counts 1, 2, 3 and 4 of the superseding indictment, guilty or not guilty?

**MS. ARANEDA:** Not guilty.

**THE COURT:** All right. Thank you.

Is materiality an issue that the jury has to decide separately in any of these counts?

**MR. GOULIAN:** Your Honor, it's an element of Counts 2 and 4, is my understanding. I believe at one point, you know, 1001 has not been charged here which is making a materially false statement. I believe the Fourth Circuit law interpreted that that was an issue for the judge to decide, not the jury.

**THE COURT:** But then it got switched. The Supreme Court said, no, the jury -- if it's an element the jurors have to decide it.

**MR. GOULIAN:** Yes, Your Honor. Which I wasn't aware of until I was researching the jury instructions for this case, and I just came across that. So I believe based on that that materiality would be for the jury on Counts 2 and 4 as well.

**THE COURT:** So do you just charge instructions on it, or do you have a separate issue on it?

**MR. GOULIAN:** I would -- I think you just charge instructions on it.

**THE COURT:** Okay.

**MR. GOULIAN:** Is my understanding.

**THE COURT:** It's just a guilty or not guilty of the count, not a -- because if it's not material it's not --

**MR. GOULIAN:** Then it would be not guilty, as to those two counts.

**THE COURT:** The government has the burden and obligation to establish beyond a reasonable doubt that the statement, the content of the statement was material?

**MR. GOULIAN:** Yes, Your Honor, or that the information that was not disclosed, the false statement was material, yes, sir.

Your Honor, there's a motion the defense filed in limine to exclude the evidence of Mr. Lefsih's Facebook postings, other related information, and the government filed a response basically saying that we don't intend to use that unless the defense opens the door to it. So I just wanted to make sure that is clear for the record. The government's intent is -- Agent Bell is going to be the government's first witness -- is to elicit that information, specified information, came to the attention of the FBI and that Mr. Bell was asked to -- when they opened an investigation Agent Bell was asked to assist in that investigation, without getting into the substance of the information that came to the FBI's attention.

**THE COURT:** Okay.

**MS. ARANEDA:** Yes, Your Honor, and I also would like clarification beforehand. I had intended -- I'm going to put my client on the stand, and I plan to ask him about his background in the sense of where he grew up and ask him why he wanted to come to the United States. I want to make sure that is not considered opening the door to any of the evidence I'm trying to keep out through the motion in limine, so if I can get some clarification on that.

**MR. GOULIAN:** Just based on that bare summary of it we don't believe that would open the door, Your Honor, to that information. If I believe at some point the defense is opening the door, I'll object and ask to approach the bench so we can consider it.

**THE COURT:** All right. And the information that was not disclosed, what's your position regarding the materiality of it?

**MR. GOULIAN:** We intend to argue that it is material.

**THE COURT:** That's why it's on the questionnaire?

**MR. GOULIAN:** Yes, Your Honor. And beyond that, I have a witness from the Citizenship and Immigration Services to explain why it's on the questionnaire and how it could potentially influence agency action. The government doesn't have to show that his negative response actually affected the decision at issue, simply that it was capable

of influencing agency action.
**THE COURT:** You don't have to show that if you knew this he would not be given naturalization?
**MR. GOULIAN:** Correct, correct. We do not have to show that it was a but for cause of the agency's determination.
**THE COURT:** All right. Are you ready?
**MR. GOULIAN:** Yes, Your Honor.
**THE COURT:** Okay. How about the jury? You're going to bring them in and seat them?
**COURT CLERK:** Could I have five minutes with them?
**THE COURT:** Yeah, okay. She needs to talk to them. We'll take a five minute recess.
**MS. ARANEDA:** Your Honor, I actually did file just two other motions, and I guess I just need a ruling.
**THE COURT:** I entered an order. Did you see the order on your rulings?
**MS. ARANEDA:** Today?
**THE COURT:** Today, yeah.
**MS. ARANEDA:** No, I have not.
**THE COURT:** Okay. You can look at that. There's a written order.
**MS. ARANEDA:** All right. Thank you.
(Court recess at 3:09 p.m.)

PRELIMINARY JURY INSTRUCTIONS

**THE COURT:** Ladies and gentlemen, now that you've been sworn as the jury I'll give you some preliminary instructions to guide you in your participation in the trial. It will be your duty to find from the evidence what the facts are. You and you alone are the judge of the facts. You will then have to apply those facts to the law. The Court will give you instructions on the law. You must follow that law whether you agree with it or not. Now nothing that I say or do during the course of the trial is intended to indicate, nor should you take it as indicating, what your verdict should be. In other words, I don't have any position about the outcome of the case. I'm the referee. I'm not on one side or the other. So don't think that because I make a ruling one way or another that I think it ought to be decided a certain way; I don't.

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the records as exhibits and any facts which the lawyers agree or stipulate to or that the Court instructs you to find. Certain things are not evidence and must not be considered as evidence by you. I'll list these for you now. Statements, arguments and questions by the lawyers are not evidence. Objections to questions are not evidence. Lawyers have an obligation to their client to make an objection when they believe evidence is being offered that is not admissible under the rules of evidence.

You should not be influenced by the fact that there is an objection, nor by the Court's ruling on it. If the objection is sustained, ignore the question. If the objection is overruled, treat the answer as you would any other answer. If you are instructed that some item of evidence is received for a limited purpose only, you have to follow that instruction. Testimony that the Court has excluded or tells you to disregard is not evidence and must not be considered. Anything that you have heard or seen outside of the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in court.

There are two kinds of evidence, generally speaking, direct and circumstantial. Direct evidence is direct proof of a fact such as the testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. You'll hear more and get further instructions on this as well as other matters at the end of the case, but bear in mind that you may consider both kinds of evidence. It will be up to you to decide which witnesses to believe and which witnesses you may not believe or how much of any witness' testimony you accept or reject. It's your province and right to decide the credibility of witnesses and the truthfulness of witnesses. I'll give you more instructions on this at the end of the case.

As I told you, this is a criminal case. There are three basic rules about a criminal case that you must bear in mind. First, the defendant is presumed innocent until proven guilty. The indictment against the defendant brought by the government is only an accusation, nothing more. It is not proof of guilt or of anything else. The defendant, therefore, starts out with a clean slate. Next, the burden of proof is on the government until the very end of the case. The defendant has no burden to prove his innocence nor to present any evidence nor to testify. Since the defendant has the right to remain silent, the law prohibits you, in arriving at your verdict, from considering that a defendant may not have testified.

Next, the government must prove a defendant's guilt beyond a reasonable doubt. You'll hear more about this in the instructions later in the case, but bear in mind that this is a criminal case and is a higher burden of proof than what exists in a civil case. The defendant is charged with making false statements or materially false statements upon which the government relied with respect to his naturalization proceeding.

During the trial you are not to discuss the case with anyone or permit anyone to discuss it with you. Until you retire to your jury room at the end of the case to deliberate on your verdict, you are not to talk about the case. Do not read or listen to anything about the case in any way. If anyone tries to talk to you about it, bring it to the attention of one of the court officials, and they will bring it to my attention. You're not to do any research or make any investigation about the case on your own. Finally, do not form any opinion until all of the evidence is in. Keep an open mind until you start your deliberations at the end of the case. If you wish, you may take notes, but if you do leave them in the jury room when you leave at night. And remember that they are for your own personal use. They are not to be given or read to anyone else. If you have iPhones or email or Facebook or anything like that, do not put anything having to do with the trial on that. That would be a violation of your oath. I just warn you about that so that nobody gets in any trouble. You're here as preferred citizens. You're jurors. You're occupying a position of honor and trust, but in today's world things happen so fast, you know, you need to tell people that don't do any of this stuff on Facebook or email or anything that can go outside of your own personal understanding of it here in court. Okay?

The trial will now begin. First the government will make an opening statement, which is simply an outline to help you understand the evidence as it comes in. Next, the lawyer for the defendant may make an opening statement. She is not required to, but she can if she wishes to. Opening statements are neither evidence nor argument. The government will then present its witnesses, and counsel for the defendant may cross-examine these. Following the government's presentation of evidence, the defendant may, if he wishes, present witnesses whom the government would, in turn, be allowed to cross-examine. After all the evidence is in, the attorneys will present their closing argument and summarize and interpret the evidence for you. The Court will then give you instructions on the law and you will retire to deliberate on your verdict. That's a summary of how the trial should look. And if you watch you'll see it unfold in that way.

The jury can now be with the government for opening statement.

Let me have you sworn as the trial jury.

(Jury sworn) (Alternate juror sworn)

**THE COURT:** The government can have opening statement.

**MR. GOULIAN:** Thank you, Your Honor.

OPENING STATEMENT BY MR. GOULIAN

Good afternoon, ladies and gentlemen. I'll just reintroduce myself. My name is Eric Goulian. I'm an Assistant United States Attorney, and I have the privilege of representing the United States in this case. As you know, your jury service is a privilege and honor associated with citizenship, and that is actually what this case is about, citizenship, or more specifically the process of someone wanting to become a citizen and false statements in connection with that process in that application. The defendant in this case, Mr. Lefsih, the government's evidence will show, came to the United States in 2010 from Paris, France at the age, I believe, of 27. He had been a student in Paris, was originally from Algeria, a country in North Africa where he grew up, where he was a citizen of. He applied for a visa to enter the United States under something called a diversity lottery program, and you'll be hearing testimony about that. And that is a program, and the word diversity is used in it because its intended to diversify countries around the world from which people are coming to the United States. And every year a certain number of slots are allocated to certain countries and people from those countries apply to get those slots. It's highly competitive, very few people get these visas, relatively speaking. The evidence will show that for the year that Mr. Lefsih applied just over two percent of the applicants received such a visa. And it's particularly coveted because once you come into the United States under that visa it puts you on a track to become a citizen. It doesn't guarantee it, but it puts you on a track whereas other visas that allow you to enter the United States, such as a student visa, does not put you on that track necessarily.

So Mr. Lefsih resided in Raleigh most of the time he was in the United States. He worked driving a cab, and the evidence will show that he started taking classes at Wake Tech Community College in Wake County, North Carolina. And he did very well there, got outstanding grades and last year he enrolled at NC State. His grades were so good that he was able to get into NC State to study chemical engineering. Also, in August of 2010 he submitted an application for citizenship, because he was close to his five years. He had to reside in the United States for five years, and he was close to his five years. He submitted an application to become a United States citizen. And his application will be an exhibit in this case, and you'll have a chance to see it. It's a form that everyone who wants to become a naturalized United States citizen has to fill out. And it asks questions about your marital history, your family, employment history. And then there's a section on there that asks other questions that are intended to establish whether the person is of good moral character. That phrase, good moral character, comes from the law. Congress requires the agency that reviews these applications, which is called Citizenship and Immigration

Services, they have to make a determination whether the applicant has good moral character. That's a requirement, one of the requirements for becoming a United States citizen. So there are multiple questions on the form that go to that determination. One of the questions, and this is the question at issue in this case, asks, have you ever been arrested, cited or detained by a law enforcement officer for any reason, arrested cited or detained by a law enforcement officer for any reason. Mr. Lefsih answered no on the form. The form was signed under oath. He submitted it. And then some months later he was called in for an interview. That's the second process where you come in, an examiner, an official with the Citizenship Immigration Services office goes through the application. They review certain applications to verify responses, and that question, have you ever been arrested, cited or detained was reviewed during the interview. Mr. Lefsih again answered no under oath, and he -- this was on November 30th last year, is when he had his interview. And then he was approved for citizen -- to become a United States citizen by that office. But there was still an additional step to the process. He had to take an oath which was scheduled for mid December. So in that intervening time period, between November 30 and mid December when he was scheduled to take the oath of citizenship, the FBI, the Federal

Bureau of Investigation, received information about Mr. Lefsih that caused it to open an investigation of him. And the FBI reached out to Agent Tony Bell with the Department of Homeland Security to assist in the investigation. And at that point no one knew -- he had not previously been under investigation, but at that point Mr. Bell determined -- looked up, determined that he had this pending citizenship application. And so Mr. Bell went out with FBI agents to interview Mr. Lefsih. Before doing that he obtained a copy of the application and ran a criminal record check and discovered that Mr. Lefsih, in fact, had multiple citations, traffic citations, over the previous four years. And the evidence will show that he was cited approximately 11 times. He had received 11 citations and he had to pay over a thousand dollars in fines and fees associated with that. Agent Bell interviewed Mr. Lefsih. Agent Bell showed him evidence of it. Mr. Lefsih at that time acknowledged having received the citations. There was one that was incorrect, but he acknowledged, yes, I received those. And then he was asked, well, you didn't disclose it on the form. And his response was, well, I didn't have to because I wasn't detained. That was his response at the time.

Now the charges in this case, there are four charges, and the first two counts, 1 and 2, charge false statements in connection with the application form. And then the second two counts charge false statements during the interview. But all four counts are about the same false statement, about whether you have ever been arrested, cited or detained.

I anticipate the main issue in this case is going to be whether -- in dispute is whether Mr. Lefsih made the statements knowingly. One thing the government has to prove is that he knew at the time he made the statement it was false. And the government's evidence will show that Mr. Lefsih's English is excellent, that he had received outstanding grades at Wake Tech, that he was at NC State so this was not a question of not understanding the English language, that the citations were not -- were not just one or two a long time previously but that there were a number that he would have known when he saw that question that it would call for a different response. The other issue I would anticipate, which goes to Counts 2 and 4, is whether the false statement was material. And that is essentially was this an important, significant false statement. And the Judge will be instructing you on the law relating to that. But there will be testimony as to why this question is in the form, again, a form that all applicants for naturalization must answer and why the response is important to the agency. So at the conclusion of this case

I'll have a chance -- the defense will have a chance to argue the case to you, but I anticipate that the government's evidence will show that he is guilty as to all four counts. Thank you.

**THE COURT:** All right. Thank you. Ms. Araneda, do you want to make a statement, an opening statement?

**MS. ARANEDA:** Yes, I will.

**THE COURT:** Go ahead.

OPENING STATEMENT BY MS. ARANEDA

Good afternoon, everyone. My name is Jorgelina Araneda, and I am representing Mr. Hemza Lefsih. The case before you today is about the interpretation of a question on an immigration form, as the government attorney has explained to you. My client is a foreign national. He was born in Algeria, which is in Northern Africa. It's a beautiful country, borders the Mediterranean. And my client came to this country legally with a green card. He did obtain it through this diversity visa process. And eventually after so many years a person is allowed to apply for citizenship. And my client did that. And the reason you are all here today is because immigration law falls under the federal laws. So the state is not allowed to regulate immigration law, and because it is federal law that is why we're in the Federal District Court and why this does not go to any other type of court.

So, anyway, my client filled out this application. It's called an N-400. It's a very long application. It's in excess of about 20 pages. And as the government explained, there is one particular question, question 23. And that question asks, "Have you ever been arrested, cited, or detained by any law enforcement officer for any reason?" And my client admits he answered, no. Now the government claims that he on purpose answered no because he wanted to hide from the immigration officials that he received traffic tickets from 2011 to 2014. My client claims that it was not on purpose because he didn't know that traffic citations were covered by that question because he had never been arrested or detained. And as the government pointed out, this is important because if he had disclosed the traffic tickets it's possible that the immigration examiner could ask him additional questions to see if he had what's called good moral character and to see if he could obtain U.S. citizenship. My client immigrated into this country, as you heard, in 2010, from the government. And my client, however, did not know how to drive until he arrived in this country. My client originally lived in New York and then came to North Carolina. When he was in New York he started taking driving classes, and he decided to become a taxi driver because my client, when he was living in France, which is the country he was living in before he came to the U.S., was a student, and he worked part-time as a teacher. He was a teacher of sciences. So he learned about the taxi cab drivers is a very common profession for many immigrants into this country because it's not easy to find a regular position when you're not familiar with the system when you go to school in this country. So he decided to become a cab driver like many immigrants. And the other reason he decided to become a cab driver is because he wanted to continue with his studies. You heard about how -- from the government -- talk about he's an excellent student. He went to Wake Tech and then he went up to North Carolina State University and was studying chemical engineering. But understand, he learned how to drive as an adult. He was new to driving. He was new to traffic regulations. He was new to taxi cab regulations. And it's true that he did get 11 citations but of those 11 citations four were only infractions.

So my client applied for citizenship. He completed the questionnaire. In his mind he had never been arrested or detained, so he thought he was fine to respond to the question, no. Our government also, even though they ask such a question, they also go through a process where anyone who applies for citizenship has to be fingerprinted. And the government after a person is fingerprinted they send them off to a database. It's usually run through the FBI database, and they do a criminal background check. Well, my client doesn't have any criminal convictions. He was cleared for citizenship. You will see the FBI records report showing that he does not have a record. He passed the test, his application was approved, and then the approval was taken away because the government learned about the traffic citations. So the reason you are here today and what you are required to do is to decide if my client, on purpose, didn't tell the immigration officials about his traffic tickets, or did he not do it out of ignorance or mistake. Thank you.

**THE COURT:** All right. Thank you. Call your first witness.

**MR. GOULIAN:** The government calls Tony Bell.

**THE COURT:** I'll just generally say, the acoustics in this room are pretty good, I think. You can hear pretty well. But I would ask everybody who is involved in speaking, myself included, to try to speak clearly and distinctly so that everyone in the jury can hear it.

**TONY BELL, GOVERNMENT'S WITNESS, SWORN**

DIRECT EXAMINATION

**BY MR. GOULIAN:**

Q. State your full name for the record, please.

A. My name is Tony Bell.

Q. How are you employed?
A. I'm a Special Agent with Immigration and Customs Enforcement, Homeland Security Investigations, in Raleigh, North Carolina.
Q. And that is part of the Department of Homeland Security; is that correct?
A. Yes, sir, part of the U.S. Department of Homeland Security. Underneath that is Immigration and Customs Enforcement and underneath that is Homeland Security Investigations.
Q. So what types of cases does your office investigate?
A. I'm a criminal investigator for Homeland Security Investigations. Our office -- agents within our office conduct a wide range of investigations, everything from immigration type violations to child pornography investigations to customs violations, to export/import, smuggling type investigations, drug trafficking investigations, gun trafficking investigations, investigations involving felons and firearms. I'm sure I'm leaving out some, but it's a wide variety.
Q. And you also investigate false statements made in connection with immigration applications; is that correct?
A. Yes, sir, I would say that falls underneath immigration investigations.
Q. How long have you been a law enforcement agent?

A. For over 13 years.
Q. At one point you were a law enforcement agent for the State Department; is that right?
A. Yes, sir. Prior to this I was a Special Agent with the U.S. Department of State, Diplomatic Security, and prior to that I was a federal police officer with the CIA in D.C.
Q. And you serve on an investigative task force with the Federal Bureau of Investigation in Raleigh; is that right?
A. Yes, sir.
Q. Directing your attention to December 1st of last year, you were asked by the FBI to assist them in an investigation of Mr. Lefsih; is that right?
A. Yes, sir.
Q. The FBI received information about Mr. Lefsih that caused them to open an investigation; is that right?
A. Yes, sir.
Q. What did you -- what information -- what did you have to identify who Mr. Lefsih was at that point?
A. I received very little information. It stated that Mr. Lefsih was a NC State chemical engineering student, provided his name and his date of birth, and they asked if I could help identify him.
Q. What did you do to accomplish that, to identify him?
A. One of the first things I did was conduct a law

enforcement record check within -- the state of North Carolina has a database called CJ leads. It's something that only North Carolina has. And it's a comprehensive database. What they do is -- it's unique to North Carolina in that they compile all the DMV records and local court records from all the counties in the state, and they are able to come up with a somewhat complete picture of trying to help you identify an individual. So when you -- when you run an individual for his DMV record you can also look to see what other addresses he might have used, any traffic violations or addresses he might have used in some type of court proceeding. So that was the first thing I did. Just based on his name and date of birth I ran him that way. I was able to identify Mr. Lefsih. In addition to that, I ran him in what is called a -- it's the Citizenship -- Citizenship Immigration Services database, which allows me to run an individual by his name and date of birth, looking to determine if -- excuse me -- looking to determine if an individual has what is referred to an alien file. So I can explain that in a second. In addition to that, I also had run Mr. Lefsih through a database called a SEVP data base, which is a Homeland Security database that's used to track foreign national students. Actually, that was one of the first things I had done, was try to identify Mr. Lefsih based on the fact that his name, the fact that he was going to school at NC State, if he was a foreign national student then he might be registered in this database.

Q. What did you determine at that point about his immigration status?

A. Early on I determined that he was not here -- the SEVP database is a database that helps track students that are here from overseas that are specifically coming here to go to school. He was not listed in that database, so I ran him in the CIS database which was able to identify him and determine that he, in fact, was a legal permanent resident and that he had obtained a diversity visa to enter the United States. So once he came to the United States he is then granted legal permanent residence status and therefore he doesn't have to be registered in this other database where we track foreign nationals that are going to school here in the United States.

Q. Did you determine whether or not he had a pending application for citizenship?

A. Yes, sir. When I -- based on running those two databases, I could not determine what was -- what his immigration status was, other than he was currently a legal permanent resident. I requested his alien file, and this is his alien file right here. It's often referred to as an A-file. I requested his alien file so that I could review it. And when I requested the alien file, I found out that the U.S. Citizenship and Immigration Services office in Durham, North Carolina actually maintained the file. So I contacted them and had them find the file to find out what was going on with the file and why they had it.

Q. And what did you find out of significance at that point, once you got that file?

A. I found out that Mr. Lefsih -- so this is December 1st of 2015. And I found out that, in fact, Mr. Lefsih had had a naturalization -- what we refer to as the N-400, the number on the form, for naturalization, that he had had his N-400 interview the day before, on November 30th, 2015.

Q. What does the N-400 refer to?

A. The N-400 refers to the -- it's the specific number assigned to that form, which is the Citizenship and Naturalization Application.

Q. That's the application that all applicants for citizenship have to fill out; is that right?

A. Yes, sir.

Q. And sign under oath?

A. Yes, sir.

Q. Did you determine whether there were any discrepancies or any incorrect information that had been provided on the form?

A. This all happened within the first couple of days, within the first week of December where I was able to determine that Mr. Lefsih had an alien file. I had to get the file from this other agency who was holding it. And I did not get the file until Monday, December 7th. So it took less than a, you know, a week from the time that the FBI had given me his information, I was given an opportunity to look at his file. At that point in time the first thing I -- I knew he had recently applied for -- he had just applied for his citizenship. He had filed a N-400. I reviewed the N-400. I reviewed the N-400 just trying to understand who this indi-- we were still trying to identify who this individual was. And while reviewing the alien file I -- I saw discrepancies in the file, things that were left blank, things that gave me question of who this individual was based on, you know, at this time also I was looking at his -- there's only essentially two forms in this file telling us about Mr. Lefsih. There's a diversity visa application and all the supporting documents that were in there that Mr. Lefsih filed in 2009, and he was able to win the diversity visa, and he was able to win this lottery visa and come to the United States in 2010. There is no other documentation on Mr. Lefsih again until he applies for his citizenship. So I'm looking at his diversity visa application and I'm looking at his N-400 trying to see if I can understand who this individual is and figure out what he's been doing for the last five years since he's been in the United States. There's a lot of supporting documents that are submitted -- as supporting documents for the N-400 such as just school records or something like that, maybe tax records or it just depends on what they file to go along with their N-400.

Q. Directing your attention -- there is a question on the form relating to criminal history; is that correct?

A. All right. So I reviewed his N-400. One of the discrepancies I identified was that he had -- there's a series of questions under Part 11, which is considered the good moral character section of the application. And there's within the application -- under this good moral character they specifically ask you on question -- there's a section between -- section 22 through 28 they want to talk to you and are asking you about your criminal history and they're trying to elicit a response from you. And it essentially asks the same question in about five different ways for the application.

**MR. GOULIAN:** If I could approach the witness and provide documents. Your Honor, this is an extra copy of the government's exhibits.

Q. I'm showing you what's been marked as Government's Exhibit [1], and I'm going to leave the others up here. Can you identify Government's Exhibit [1], please?

A. It's a copy of the N-400 that Mr. Lefsih signed and submitted in support of his citizenship application.

Q. And you're referring to a series of questions on that form?

A. So on page 15 there's a section before you get to Section 22. Would you like for me to read that specific warning, what's written there in bold?

Q. Yes. You're referring to page 15, above question 22?

A. There's a paragraph that separates the previous questions from the next following set of questions. And it reads, "If any of Item Numbers 22 - 28 apply to you, you must answer "Yes" even if your records have been sealed, expunged, or otherwise cleared." And this is listed in bold italics. "You must disclose this information even if anyone, including a judge, law enforcement officer, or attorney told you that it no longer constitutes a record or told you that you do not have to disclose the information."

So question 22 asks, have you ever, in bold letters, committed, assisted in committing, or attempted to commit, a crime or offense for which you were not arrested? And Mr. Lefsih answers, no.

Question 23. Have you ever, in bold letters, been arrested, cited, or detained by any law enforcement officer (including any and all immigration officials or the U.S. Armed Forces) for any reason?" And Mr. Lefsih answers, no.

Q. Did you obtain information that indicated that the

answer to that question was incorrect?
A. Yes.
Q. What was that information?
A. I had -- one of the first record checks I had run on Mr. Lefsih was that he, in fact, did have a criminal history in the State of North Carolina in that he had numerous offenses and numerous convictions, misdemeanor convictions for some of these violations.
Q. Resulting from traffic citations, correct?
A. Yes, sir.
Q. Now after determining that, was an effort made to contact Mr. Lefsih?
A. Mr. -- one of the FBI agents involved in the investigation contacted the North Carolina State -- North Carolina State University Police Department, the campus police at NC State.
**MS. ARANEDA:** Objection, Your Honor. I don't think that that's really pertinent to -- the other people that he had to contact to meet with Mr. Lefsih.
**THE COURT:** Overruled.
A. So on Monday, December 7th, the FBI agent contacted NC State Police and requested NC State Police make contact with their student, Mr. Lefsih. NC State Police contacted Mr. Lefsih and asked him if he would come to the office for an interview. And Mr. Lefsih said, no, he declined the

invitation and said that he wasn't going to talk with them without a lawyer present. So this information was relayed to me. We were attempting to meet Mr. Lefsih at school, have a conversation with him, and conduct an interview of Mr. Lefsih. So the next day myself and two other agents went to Mr. Lefsih's door at approximately nine o'clock in the morning.

Q. The door of his residence?

A. Yes, sir, I'm sorry.

Q. In Raleigh, North Carolina?

A. Yes, sir. On Tuesday, December 8th, myself and two other FBI agents went to Mr. Lefsih's residence in Raleigh, North Carolina, the same residence where he had lived when he filed his N-400 application. And I identified myself. I told him who I was. I told him I was a Special Agent. I told him I was with Immigration and Customs Enforcement, and I told him that I wanted to talk to him about his N-400 application, that he -- I knew that he had just recently had his N-400 interview the previous Monday and that he was scheduled to have his naturalization ceremony the following Monday. He was scheduled to be sworn in as a citizen the following Monday, December 14th. And I told him I wanted to come in and talk to him about it. Mr. Lefsih was on crutches at the time. He had had a recent soccer injury, so he suggested that we -- and he allowed us to come in.

He -- we sat down on the couch, myself and Mr. Lefsih sat down on the couch together. Because of his injury we sat down. At that time I provided Mr. Lefsih a Miranda Rights warning form, and I asked Mr. Lefsih if he understood, if he could read -- read English, if he understood how to read English, if he could speak English. He said that he had. He mentioned to me that he, in fact -- I asked him if he had taken English as a second language while at Wake Tech University. And he said, no, that he had actually taken a placement test and had placed out of English as a second language; and, therefore, he didn't have to take the remedial English.
Q. You said you indicated Mr. Lefsih had a Miranda warning?
A. I gave him the Miranda warning, the reason why I asked him --
Q. And what does that warning consist of?
A. A Miranda warning is something that typically police officers are required to give you a Miranda Rights warning if you are -- if a subject is in custody, if they're no longer free to leave.
Q. Was Mr. Lefsih in custody at the time?
A. No, sir, he was not.
Q. But you gave him a warning anyway?
A. I gave him a warning anyway because when police, even

though it was not myself, another police officer had attempted to make contact with him the day before he invoked his right and said he wanted to talk to -- he wanted a lawyer present before he talked to the police. Mr. Lefsih didn't know that I was going to be there at the interview, but another police officer asked him. So I gave him the same warning that we would give to somebody if I had them in custody just so that he understood and that he was, you know -- and I explained to him that we could talk and that he was not in custody.

Q. What does the warning consist of? What do you tell them?

A. That they have a right to counsel and that they have a right for counsel to be present if they are being questioned. Mr. Lefsih did --

Q. And that they have a right to remain silent; they don't have to answer questions, also?

A. Yes, sir.

Q. Was that part of the warning you gave him?

A. Yes, sir. And the reason why I asked him if he understood and could read English is because I gave him the rights form to read himself. I know myself it's easier for me to understand something if I read it myself versus somebody reading it to me. So I gave it to him, and I wanted to make sure he understood English before I asked him to read something. So he agreed to talk with myself and the other agents, but he refused to sign the form. And I told him that was fine. And I told him that we could meet -- if he felt uncomfortable and he wanted to stop the interview at any time we could. So at that point in time we proceeded through the N-400 application. I began at the very beginning on page 1 and started talking to Mr. Lefsih about his -- where is he from, how long has he been here, does he have any brothers and sisters that are, you know, that are here. Basic biographical information. How long he had lived in a certain address, things like that, and just trying to establish some rapport with Mr. Lefsih so that we can have a conversation.

Early on in the -- early on in the application one of the discrepancies that I saw was on page 3 of the application it asks for information on how to contact you. And Mr. Lefsih lists -- he lists, you know -- he lists -- they give you four different blanks to list your phone number, right? They want your daytime phone number, your work phone number, your evening phone number and your mobile phone number. They're asking for every which way they can to be able to reach out and touch base with you.

Q. Had he provided all of those types of phone numbers?

A. He provided the exact same phone number in each one of those. So it's his mobile phone number, but it's also --

you know, he puts that same phone number in each one of those blocks. He made an effort to fill in each one of those blocks. But I look at it and it says his email address, if any, enclosed. Now this is a form that you're filling out, you're applying for your citizenship, you know, you're going to -- and he was so diligent that he puts all of those, the same phone number in every block, and I get to this block and this is Part 3, Question 5, and he leaves the email address part blank. And, again, this is one of the discrepancies I looked at prior to going to talk to him was that this was odd, this is unusual. Why does somebody not put their email address on a form.

Q. And did you have reason to believe that he did have an email address?

A. I did because we knew that he had a Facebook account prior to us going to go talk to Mr. Lefsih.

**MS. ARANEDA:** Objection, Your Honor.

**THE COURT:** Overruled.

Q. And what about by virtue of the fact he was a student at NC State?

A. I'm a former NC State student. I know -- and I went to school at NC State 20 years ago, and I had an email address at NC State. So I know that just those two things alone, the guy has probably got an email address. So, again, I get to that point and I ask him, hey, why did you leave this blank? And Mr. Lefsih had a -- I would say he had a pretty arrogant air to himself at this point.

**MS. ARANEDA:** Objection, Your Honor.

**THE COURT:** Overruled.

A. During the interview. We were trying to establish a rapport. I'm trying to get to the point to where I'm going with this interview, but I have to -- you can't just jump into this. We're trying to have a conversation. I'm trying to explain to him what's going on. I'm explaining to him that this is odd; why did you leave this blank?

Q. What was his response?

A. He said, well, I have numerous emails. I said, okay, well, give me a few. Then he wants to bicker over why he's going to cooperate. And I explain to him again, well, I'm an immigration officer. As a special agent I'm designated as an immigration officer, and I'm here reviewing your N-400 with you. I'm telling you I find discrepancies in this, and it looks odd to me. I want to talk to you about it. And so he gives me -- he says he's got numerous emails, and he gives me two. He gives me two email addresses. I ask him if he's got more and he alludes that he does, but he won't give me the addresses. I said, okay.

Q. What other information did you review with him?

A. So we continue to go through the application and we reviewed -- and I'm using the application itself as a format for the interview. I'm trying to go through and see what's important in the application to use that to elicit a conversation with him. I talk about his address. I talk about his family, where his family is at, and then we get to the point where we start talking about his employment history. Mr. Lefsih says -- he identifies in the form that he's been a taxi driver the whole time that he's been in the United States. He entered the United States in 2010. Prior to him coming to the United States he lists -- when I look at his diversity visa application it shows that Mr. Lefsih was -- it implies that Mr. -- in one aspect it says that he is a student and a teacher and working on a master's degree in physics but in another section of the application it's kind of confusing because it looks like he has received a master's degree in physics.

Q. Excuse me. I believe you're referring to Government's Exhibit [6]. If you would just look at Exhibit [6].

A. Yes, sir. This is a copy of the diversity visa application that was submitted by Mr. Lefsih prior to him coming to the United States.

Q. Okay. And what portion of that exhibit were you just referring to?

A. So in the very beginning of it, it says on block 12 he's a student in master's degree -- Master's of Physics, and I work as a teacher. But then -- then in Block 23 it says, list below all educational institutions attended. So he lists that he attended Paris Number VII between what appears to be September 2004 to June 2009, course of study, physics, degree or diploma, Master. And then below that he lists that he's got an electronics degree from a university in Algeria and then a high school and other degrees below that. So I asked him, I get to this point and I say, I don't understand, what -- I asked him here -- it's odd to me, hey, you're working on a master's degree in physics in Paris, France but then you come to the United States and all you do is drive a cab. You know, I don't understand, you know. You're that smart that you're doing this in Paris, but you come here to the United States and you drive a cab.

Q. This is what you said to him?

A. I did. I'm trying to, you know, have him explain to me why he's doing this.

Q. What is his response to that?

A. And he -- he just kind of explained it away and just said, well, you know, that's what he's doing, you know, and he wanted to go to school, and it was an easy way -- an easy profession for him to do this and go to school.

Q. Did you ask him about whether he had applied for a student visa?

A. Well, during that period of time --

**MS. ARANEDA:** Your Honor, I'm going to object to this whole line of questioning. We're going into issues that really are outside of the scope of this case. My client has been charged with whether he made a false statement on question 23 of the N-400, and we're now going into all these other areas that concern education.

**THE COURT:** Overruled. I think it shows state of mind. Isn't that your point?

**MR. GOULIAN:** Yes, Your Honor.

Q. Regarding the student visa, as to whether he had applied for that, did you bring that up?

A. Yes, sir. The very next section in the application. You know, I'm using this application as a format for the interview. The very next section of the application talks about where he is currently going to school at Wake Tech University. And during this period of time I asked him, I said -- again, we're having this conversation about his education that he already has in Paris, we're having a conversation about his current profession and then I asked him -- and I know that he is here on a diversity visa. And a diversity visa is very different than other visas. And I asked him, I said, well, have you ever applied -- did you ever apply for another visa to come here to the United States prior to this, and he said, no. He goes I did not. I only applied for a diversity visa. And I asked him why?

I asked him why he hadn't applied for an F-1.
Q. What is a F-1.
A. An F-1 is a student visa. So here is an individual who's clearly very intelligent, working on a master's degree in physics in Paris. And I asked him, well, if you wanted to come to the United States why didn't you apply for a student visa and come here? He said, well, I applied for the diversity visa because it would grant me a better class of entry into the United States. And never in my 13 years have I ever heard anybody tell me -- tell me that.
Q. What did you understand him to mean by that?
A. That he knew the difference between coming to the United States as a F-1 student and coming to the United States on a diversity visa.
Q. What is the difference?
A. When you come into the United States as a diversity visa you immediately become a legal permanent resident. You immediately receive all the benefits of being a United States citizen except for the one benefit of being able to vote. That's the only difference that's separating -- and serve on a jury. Those are about the two things that separate a legal permanent resident from a United States citizen.
**THE COURT:** Does a legal permanent resident have to register and report every year?

A. No, sir, they don't.

**THE COURT:** They do not?

A. They do not.

**THE COURT:** A person with a student visa or a green card would have to do that?

A. Well, the green card is what's referred to as a legal permanent resident card.

**THE COURT:** Okay.

A. But a student that comes here to the United States, they're tracked and they're here on -- they're here as long as they continue to make the -- as long as they continue doing what they are supposed to be doing. So every student is different, every situation is different, but typically what happens is when you come here as a student you're supposed to meet these criteria. When you come here as a student you're going to go to school, you're going to get good grades. You have to have a sponsor that's going to make sure that you're not a public charge. You're going to -- you're not allowed to work for a period of time until the school tells you you're allowed to work. You're going to go to school and that's all you're here for is to go to school.

Q. Do any of those restrictions apply to someone that is on a diversity visa?

A. None of them. And in my experience anybody that is trying to come to the United States, anybody that, you know, if they're overseas and they want to come to the United States, they're trying every possible way they can to get into this country, one way or the other. And they do everything they can to get here. They don't care. They just want to get here. And for him to say that to me, again, after I've already looked at his paperwork, I've already had an idea of who he is prior to going to talk to him, and I thought that was odd. And I said, okay, so we get past that point. And I asked him, I said, well, if you've got a master's degree and you're -- you're working on a master's degree in Paris, why would you leave that, come to the United States and start going to Wake Tech Community College? Why would you start all over again? Why would you start from the very beginning working on a degree? I mean, I've got a college degree and I know I worked really hard at that to get to that. I would never back up and say, that doesn't count; I'm just going to go back and start this all over again. And here in the United States we would accept a degree from Paris.

Q. What was Mr. Lefsih's response to that question?

A. He said -- he said that it was easier -- he was able to get more financial aid. As an undergraduate student he was able to get more financial aid than if he pursued a graduate education. And, again, another -- that's another situation that I don't think is -- that's not entirely accurate.

Q. Did there come a point in your interview when you confronted him with the record of his traffic citations?

A. I did. So there's a large section of the application that is referring to spouses and children, things like that, so that did not apply to Mr. Lefsih. So we get to Part 11 in the application which is considered the -- it used to be titled on there, Good Moral Character, and they've changed it, but it's still the section. So the questions under Part 11 are numbered 1 through 53, and they are yes or no questions. So I specifically just asked him some of the questions that had also been asked by the adjudicator, and I know which questions those are, because the adjudicator -- Mr. Lefsih had filled this out and mails this in, right? He fills this out, he signs it under oath at the very last page. He signs it under oath, and then he mails it in. When the adjudicator calls them in, the CIS calls them in for their naturalization interview, the CIS adjudicator uses a red pen and they -- you can tell which question they specifically asked because they put a red tic mark by it.

Q. When you use the word adjudicator, you're referring to the individual who is interviewing them for this application?

A. Yes, sir.
Q. And when you say CIS, that refers to Citizenship Immigration Services?
A. Yes, sir. So I asked some of the questions that she had also asked. And then I get to -- to the section where he's talking about criminal history. And there's one, two, three, four, five, six, seven, eight. There's eight questions, eight questions in this section where they are essentially asking the same question over and over again in different ways to elicit a response from you. And I get to that section with Mr. Lefsih, and I go -- and I read him the same thing, I read him the same questions, and I go through those questions with him and, again, he answers, no. At this point this is the third time he's had an opportunity to disclose this -- this issue. I read that question to him the same way I just read that question to you and emphasized and explained it to him. I read these questions to him that way, read them all, went all the way through. And then when I got through with that, I went back and asked another question that I thought was pertinent on the file. And then I came back to this section and I asked him again about this, and I said -- and I said, you know, asked him the question again, and he said, no. At that point in time I pulled out a copy of that CJ Leads Summary, which is a summary of this

individual's driving record and criminal history here in the State of North Carolina. And it lists out every citation, every conviction, everything that is associated with you and essentially police officers -- any police officer can pull that up now on their cellphones. They can pull it up in their car when they pull you over. They can get an idea of who you are, and it helps them identify who this individual is.

Q. And you had a printout of it?

A. And I had a printout of it, and I showed it to him. I said, well, if you, you know, what's this? And I went through each one of those. Each one of those different -- there was 11 citations. And reviewed them with him. And there was one in particular, and he admitted that those were him.

Q. Except as to one; is that right?

A. There was one citation, and I would have to look at your -- actually, I don't even know if we would be able to see it without looking at the CJ Leads, but there was one citation that had been entered -- it was a correct citation number of the sheet, but the actual offense said possession of liquor for sale. And Mr. Lefsih said, that was not me; that is not me. All this other stuff, that's me, but that is not me. I said, okay. And then --

Q. In fact, he had never been cited for possession of liquor for sale?

A. No. It appears to be -- basically we were able to find the citation that the officer wrote him the citation and in fact, it was failure to maintain a manifest, a taxi manifest. But what appears to have happened is that the Clerk of Court or somebody just entered in the wrong offense under the description when they were actually doing the database entry.

Q. You testified that he admitted the other citations that you confronted him with on that date?

A. Right. And I asked him, I said, explain, you know, why. They asked you all these different ways. And question number 23 the question reads, have you ever been arrested, cited or detained by any law enforcement officer. And he said, well --

Q. Would you read that question in its entirety. You stopped.

A. I'm sorry. "Have you ever been arrested, cited, or detained by any law enforcement officer (including any and all immigration officials or the U.S. Armed Forces) for any reason?" And he said --

Q. Are there any words in that question in bold?

A. The word ever is in bold. Have you ever been arrested, cited or detained.

Q. All right.

A. So I showed this to him and asking him why would he not, you know, tell immigration about this.

And he said, well, right there it says or detained. I wasn't detained; so, therefore, it didn't apply. But I said, you were detained. A police officer stops you, you are being detained. You're not free to go until he is done with you, you know. You were cited, you were given numerous citations for traffic related offenses, and you didn't list those. You didn't -- you didn't -- you didn't explain it away. There's a question --

Q. So what was his response.

A. And every time I tried to talk to him or explain this to him, and tried to get a better explanation from him, he said, yeah, I wasn't detained; so, therefore, it doesn't apply to me. And that was his answer. I wasn't detained; so, therefore, it doesn't apply to me. And in specific 29, question 29, it gives you an opportunity to list all these offenses, and it gives you an opportunity to explain it away.

Q. Now you or the FBI subsequently obtained certified copies of his court records associated with the citations; is that correct?

A. Yes, sir. Do you want me to finish what happened that day?

Q. Was there additional -- were there additional exchanges of significance during the interview?

A. I believe so. Following this --

**MS. ARANEDA:** Actually, Your Honor, I object, because the government did not ask him -- he wants to continue to testify when the government has not asked a question.

**MR. GOULIAN:** Your Honor, I thought he was done with that, talking about his interview with Mr. Lefsih that day.

**THE COURT:** Overruled.

Q. What additional exchanges of significance occurred?

A. After we reviewed his criminal history, the FBI began questioning Mr. Lefsih, and at that time he -- he, you know, decided to terminate the interview and asked us to leave and said that he wanted a lawyer, and I instructed Mr. Lefsih to obtain a lawyer and to contact me immediately.

Q. Did you and the other agents leave at that point?

A. We left.

Q. And at some point the certified copies of his court records associated with the driving citations, the citations were obtained; is that correct?

A. Yes, sir.

Q. Could you look at Government's Exhibits [10] through [20]. Just look through those.

A. Yes, sir.

Q. What are Government's Exhibits [10] through [20]?

A. They are certified copies from the Clerk of Superior Court in Wake County. They're certified copies of all the citations and judgments of Mr. Lefsih, that were issued to Mr. Lefsih.
Q. And Government's Exhibit [21], what is that?
A. Twenty-one [21] is a certified copy from the Department of Transportation, Division of Motor Vehicles. These are copies of the letters that DMV mailed to Mr. Lefsih for failure to appear -- for failure to appear for some of these violations and for failure to pay fines for some of these violations. And they were notices, basically, informing Mr. Lefsih that if he didn't appear in court of if he didn't pay the fines then his driver's license was going to be revoked.
Q. And Government's Exhibit [9], what is that?
A. This is a summary chart that you developed to list these offenses, list them by the date, the specific citation number, the offense that was charged by the police officer, the disposition, listing also the DMV which also lists the letters that correspond to that particular citation where DMV has sent these letters to him corresponding with him about that charge. And then underneath that what the resolution was, whether the charge was dismissed, the individual, if Mr. Lefsih, had to pay a fine, specifically what day that was. And then on the far

right column is whether or not he obtained an attorney to represent him in court for those offenses.

Q. Does Government's Exhibit [9] fairly and accurately reflect information contained in the certified records that you already talked about in Exhibits [10] through [21]?

A. Yes, sir.

**MR. GOULIAN:** Your Honor, at this time I would move into evidence Government's Exhibits [1], [6] and [9] through [20].

**THE COURT:** They're received.

**MR. GOULIAN:** And if I could publish to the jury Government's Exhibit [9], the summary chart, and copies if I could hand to the jury.

**THE COURT:** All right.

Q. So Agent Bell, the summary chart, Government's Exhibit [9], how many citations does it show Mr. Lefsih received?

A. Eleven citations.

Q. And for those citations how many -- how many guilty pleas does he have under the disposition?

A. Six.

Q. And the chart also indicates fines that were paid. Could you just go through each of those with the date and the amount?

A. Yes, sir. On the second row, on July 20, 2012, he paid a $248.00 fine. On December 6, 2012, he paid a

$238.00 fine. On July 18, 2013, he paid a $200.00 fine. On March 3rd, 2014, he paid a $195.00 fine. And on October 6, 2014, he paid $178.00 fine.

Q. And the last column indicates when he retained an attorney in connection with the associated citations. So how many times did he retain an attorney?

A. Five.

Q. Could you look at Government's Exhibit [22], please? What is that?

A. This is the Business Record Certification for North Carolina State University where they provided the transfer transcripts, a copy of the transfer transcripts from Wake Tech University and also where they had transferred those -- there was a transfer summary of his education from Wake Tech and put it, essentially, into NC State's database.

Q. So the first page after the certification contains reference to a writing skills placement test that Mr. Lefsih took. Do you see that?

A. Yes, sir.

Q. And what does it indicate is the result of his taking that test?

A. It says that, "Congratulations, you have tested out of English 070, 080 and 090."

Q. And what does it indicate is the score on that test?

A. A 98 score.

Q. And below that is a reference to a reading placement test?

A. Yes, sir. He scored a 95 on the reading test, and it says, "Congratulations, you have tested out of Reading 070, 080, and 090."

Q. And then on the next page there's a reference to a math placement test. What were the results of that?

A. Yes, sir. He -- pre algebra, he received an 82. Algebra, he received a 96; college algebra, an 80; and trigonometry, an 82. And underneath that it says, "Congratulations, you have tested out of math 050, 060, 070, 080, 161, 171, and 172.

Q. And then the page after that contain the grades that Mr. Lefsih received in the courses he took at Wake Tech Community College; is that right?

A. Yes, sir.

Q. All right. And what does it show as the time period when he took these courses?

A. That he began taking college classes in the Spring of 2013 and that he finished taking classes at Wake Tech in the Spring of 2015.

Q. And could you go through each of the courses he took listed by the course title and indicate the grade that he received for each of the courses?

A. Calculus I, an A. Cellular -- it appears to be

Cellular Physics I, A; Calculus II, A; Expository Writing, B; Physical Geology, B; Calculus III, A; General Physics I, A; American Government, A; Chemistry I, A -- I can't read that -- Prin of Microeconomics, A.

Q. Is that principle.

A. Principles of Microeconomics, A; Engineering Statistics, A; Differential Equations, A; General Physics II, A; General Chemistry II, A; Intro Progressive & Logic -- I don't know what that is -- Intro Progressive & Logic, an A; Argument Based Research, B; American History I, A; American Lit II, B; Technology and Sociology, an A; and World Religions, an A.

**MR. GOULIAN:** Your Honor, I would move Government's Exhibit [22] into evidence.

**THE COURT:** It will be received.

**MR. GOULIAN:** And I have no further questions of this witness.

**THE COURT:** Okay. Do you have any cross?

**MS. ARANEDA:** Yes.

CROSS-EXAMINATION

**BY MS. ARANEDA:**

Q. Agent Bell, I would like to go to Government Exhibits [10] through [20] concerning the citations.

A. Yes, ma'am.

Q. Government Exhibit [10], at the very top, could you

please read the very top line of the form. What does it say?
A. State of North Carolina, Wake County District Court, File No. 2011IF 719572.
Q. Okay. And right above that, what does that line read?
A. North Carolina Uniform Citation - Court Copy.
Q. Okay. And do you know what IF stands for?
A. I don't know a hundred percent, but I can infer that it means infraction.
Q. And is an infraction the same thing as a citation?
A. Well, no. I think an infraction is the level of the offense, is what it is, how it's classified. So a citation is what is issued, depending on what -- depending on what the offense was determines whether or not it's an infraction or if it's a criminal offense.
Q. Okay. And could you read the line that starts with To the Defendant Named Below: If you could read what it says after that. You have been charged with.
A. To the Defendant Named Below: You have been charged with a misdemeanor or (s) or infraction or (s) specified below. Read this citation carefully.
Q. Okay. So in the end this is an infraction, is that not correct?
A. Yes, ma'am.
Q. Going to Government Exhibit Number [11], would you

please on the line that says Item Number at the very top, would you please read the File Number to that citation?
A. Yes, ma'am. 2011IF 737769.
Q. Okay. And does this also below, To the Defendant Named Below, does it read, You have been charged with the misdemeanor or infraction specified below?
A. Yes, ma'am.
Q. Going to Government Exhibit Number [12], could you please read the file number?
A. 2011IF 737770.
Q. All right. And that corresponds -- could you read the citation number as well?
A. Citation Number is 627484E.
Q. And that citation number is on Government Exhibit Number [9]; is that not correct?
A. Yes, ma'am, I believe it's on the second row.
Q. Okay. And once again, the file number does contain IF, indicating an infraction; is that correct?
A. Yes, ma'am.
Q. Okay. And very briefly, going back to Government Exhibit Number [11], infraction 737769, could you please read the citation number?
A. 082157E.
Q. This is Government Exhibit --
A. On Number 9, it's listed on the very --

Q. Okay. What page?
A. I'm sorry. Am I looking at [10] or [11]?
Q. So on [9]. Go to Government Exhibit [10].
A. 082157E.
Q. Okay. And is that on Government Exhibit Number [9]?
A. Yes, ma'am. It's the very top one.
Q. And that is an infraction, correct?
A. Yes, ma'am.
Q. Okay. And then going to Government Exhibit [11], could you read the citation number?
A. 627483E.
Q. And that is also on Government Exhibit Number [9]; is that correct?
A. Yes, ma'am.
Q. And that is also an infraction, correct?
A. Yes, ma'am.
Q. And going to Government Exhibit Number [12].
A. We just did [12].
Q. Right. And that is, once again, to confirm, that is also on the Government chart?
A. Yes, ma'am.
Q. Then going to Government Exhibit Number [13], could you please read the file number?
A. 2011CR 780901.
Q. And what is the citation number?

A. 632085E.

Q. And is that also on the chart, Government Exhibit [9]?

A. Yes, ma'am, it's the third row down.

Q. And that reads the citation was issued for failure to maintain a manifest of passengers, correct?

A. Correct.

Q. And then you see RCC, which stands for Raleigh City Code; is that correct?

A. I'm sorry?

Q. RCC for Raleigh City Code or city ordinance?

A. Okay.

Q. And then go to Government Exhibit Number [14]. Could you read the file number?

A. 2012CR 728960.

Q. And the citation number?

A. F378784.

Q. And is this also listed on Government Exhibit Number [9]?

A. Yes, ma'am.

Q. And this offense is for operating a motor vehicle while the defendant's driver's license was revoked; is that correct? Exhibit 14.

A. Yes, ma'am. There's two violations there.

Q. And the second one is failure to display taxicab driver's permit; is that correct?

A. Yes, ma'am.
Q. And that is listed on Government Exhibit Number [9]?
A. Yes, ma'am.
Q. Going to Government Exhibit Number [15], if you could read the file number.
A. 2012CR 728961.
Q. And the citation number, please.
A. F378785.
Q. And is that on Government Exhibit Number [9]?
A. Yes.
Q. And is this for operating a taxicab in the corporate city limits of Raleigh without possessing a valid driver's permit?
A. Yes, ma'am.
Q. Is it also for operating a taxicab in the corporate city limits of Raleigh while not possessing a valid manifest?
A. Yes, ma'am.
Q. Going to Government Exhibit Number [16], could you please read the file number?
A. 2012CR 728962.
Q. And the citation number?
A. F378786.
Q. And is this also on Government Exhibit Number [9]?
A. Yes, ma'am.

Q. And going back to Government Exhibit Number [9] in the case disposition for Exhibits [14], [15] and [16], would you please read what it says?
A. All charges were dismissed on December 4th, 2012 due to officer not present.
Q. Okay. Going to Government Exhibit Number [17], could you please read the file number?
A. 2012IF 726222.
Q. And the citation number, please.
A. F824982.
Q. All right. And this citation is listed on Government Exhibit Number [9], correct?
A. Yes, ma'am.
Q. And this is listed as an infraction; is that correct?
A. Yes, ma'am.
Q. Going to Government Exhibit Number [18], this looks a little different from the other citations, correct?
A. Yes, ma'am. This is a handwritten one.
Q. Okay. And could you please read the file number that starts with a C at the very, very top?
A. C 2344016.
Q. And is this on Government Exhibit Number [9]?
A. Yes, ma'am.
Q. And going to Government Exhibit Number [19], could you please read the file number?

A. 2014CR 705670.
Q. And the citation number.
A. 54624E4.
Q. And this Government Exhibit is also on the Government Exhibit Number [9] summary, correct?
A. Yes, ma'am.
Q. And then finally we have Government Exhibit [20]. If you could read the file number.
A. 2014CR 722002.
Q. And that's for a citation number; could you read that?
A. 9F89159.
Q. Okay. And the charge for this is operating a motor vehicle on a street or highway in a manner to impede the regular flow of traffic. Is that correct?
A. Yes, ma'am.
Q. And the citation to what this is violating is RCC 12-2028; is that correct?
A. Yes, ma'am.
Q. Which represents Raleigh City Code; is that correct?
A. Yes, ma'am.
Q. So Government's Exhibits [10] through [20] are always listed in Government Exhibit Number [9], correct?
A. Yes, ma'am.
Q. So of all those 11 citations is it not correct that four of those are infractions?

A. I'll have to go back and count, but that sounds about right?

Q. Okay. Concerning -- one moment.

Earlier in your testimony you were going through the naturalization application called the N-400, correct?

A. Yes, ma'am.

Q. And you reviewed the questions with Mr. Lefsih at his apartment, correct?

A. Yes, ma'am.

Q. And here in court you were discussing that questions -- Part 11, questions 22 through 28 concerned questions that actually go to good moral character; is that correct?

A. Yes, ma'am.

Q. And you mentioned when you were looking for discrepancies that you had looked at question 29 on this application. Would you please look at that, page 16, and this is Government Exhibit Number [1].

A. Yes.

Q. Okay. If you could please read the first sentence of paragraph 29?

A. If you answered yes to item numbers 23 through 28, complete the following table. If you need more space, use an additional sheet of paper and provide any evidence to support your answer. If you answer no to all items 23 through 28, go on to item number 30.

Q. All right. And so if someone did not respond to the previous question with a yes, a person would not be completing question 29, correct? So if they've marked no to questions 22 through 28 there would be no reason for anyone to fill out question 29, correct?
A. If they were telling the truth through 23 through 28, but --
Q. Well, that's not my question. I said, if any person -- please listen to the question. If a person marked no to questions 22 through 28, there would be no reason to complete 29, correct?
A. No. I look at this as an opportunity where it's providing the applicant to list his citations.
Q. It's just asking, clarifying what the question is.
A. I don't read it that way. I read it that this is an opportunity for the applicant to list his offenses, to list the outcome. It clearly asks, it asks again, were you arrested, cited, detained or charged. He was cited 11 times, and he didn't list them.
Q. Mr. Bell, question 29, if you'll just read what it says again, just the first part.
A. If you answered yes to items numbered 23 through 28 complete the following table.
Q. Okay. That's fine. And that section is not completed, correct?

A. No, it's not.
Q. If you would please look at Page 18, Part 12 where it says, Your Signature. Where it states, Your Statement, would you please read the two sentences?
A. "I certify, under penalty of perjury under the laws of the United States of America, that this application, and the evidence submitted with it are all true and correct. I authorize the release of any information USCIS needs to determine my eligibility for naturalization."
Q. All right. And that question does not use the word oath, correct?
A. No. He's signing under penalty of perjury.
Q. That's not my question. My question was, did you see the word oath?
A. No audible response.
Q. Have you ever worked as an immigration officer at a CIS office?
A. I'm considered an immigration officer as a special agent, but I do not -- I do not sit as a -- in CIS, no.
Q. So you have never worked as an official processing applications, correct?
A. No.
Q. Okay. And so you were testifying about the difference between the student visa, the F-1 and being a permanent resident. And you testified that someone who has a student

visa, they don't have the same benefits as a person who has permanent resident status; is that not correct?

A. That's true.

Q. And is it not true that someone who has a student visa cannot work in this country?

A. That's not always true, no.

Q. But in general if you have a student visa you cannot just go and work anywhere that you want to; is that not correct?

A. No, you have to have permission from the school.

Q. Right. And is it not correct also that only certain types of students, depending on what kind of a program, can be authorized to work?

A. Yes.

Q. So, in other words, if someone is at the university as an engineer and, for example, if they just want to have part-time work and work at a Walmart, they are not allowed to do that; is that correct?

A. Not without authorization from the school.

Q. All right. So when someone is a permanent resident, can that person work wherever they want?

A. Yes, ma'am.

Q. Okay. And is it not true that people who have student visas are not able to obtain student loans in this country?

A. I don't know if that's true or not.

Q. So do you know if there are any programs for foreign students to get financial aid in this country?
A. Yes, there must be, because there's --
Q. Do you have any direct information? I'm not asking for you to speculate, but do you have any direct information?
A. Yes, I've heard of foreign national students that are offered different programs so they can go to school here. I personally have not applied for any of those, no.
Q. Can you name one?
A. No, I do not.
Q. Have you ever worked with student loans? Have you ever been a student loan officer?
A. No.
Q. Do you know -- that's fine. You were testifying when you went to the apartment of Mr. Lefsih on December 8 of 2015, is it not correct that you told him that he was not in custody, but yet he allowed you and the other officers to enter his apartment to speak with him, correct?
A. Yes, ma'am.
Q. And you told him that you wanted to talk with him about his N-400 application; is that not correct?
A. Yes, ma'am.
Q. And you went through the entire application with him, correct?

A. No.
Q. You did not go through the entire application with him?
A. No. We stopped at question 29.
Q. So you went through certain portions of the application with him?
A. Yes, ma'am.
Q. And you specifically discussed question 23 that reads, "Have you ever been arrested, cited, or detained by any law enforcement officer", correct?
A. Yes.
Q. And his response was that he answered no because he said detained does not apply to me. And his response for all the other questions was the same because he said they didn't apply to him because he had never been detained by law enforcement officers, correct?
A. His exact response was, or detained by law enforcement. And he was trying to say that since he was not detained by law enforcement all that other stuff didn't apply.
Q. Okay. Thank you. One moment, please.
You were testifying about the traffic citations that you showed Mr. Lefsih. Is it not true that you showed it to him on a smart phone and you did not have printouts?
A. No. Cause we reviewed -- we reviewed the application

-- we reviewed the CJ Leads with him and on there was -- was this manifest, excuse me, was selling liquor for sale.

Q. I wasn't asking that question, but in the end you testified that that was a mislabel by the Clerk of Court's office; is that not correct?

A. Yes, ma'am. Cause at the time I was -- you know, I didn't understand how it could be -- how it could be wrong on his criminal history when in fact --

Q. Right. So you had a printout that you showed him?

A. Yes, ma'am.

Q. You also testified, Agent Bell, concerning the diversity visa and the applications that my client had completed in the process, correct?

A. Yes, ma'am.

Q. And you noted -- and you discussed because the government asked you a question about Government Exhibit [6], which is one of the applications for the process for the diversity visa, and you spoke about question number 12 concerning -- to state your present occupation. And you read that Mr. Lefsih had written in he's a student in master's of physics, and I work as a teacher; is that not correct?

A. Yes, ma'am.

Q. Okay. And then you went to question 23 on the second page, and you stated that you saw some kind of discrepancy because he had listed for the very first item under a section where they asked you to list the school and location, when you attended, course of study and degree or diploma. And you testified that he listed the school in Paris where he studied physics, and under degree or diploma he had entered master; is that correct?

A. Yes.

Q. And then going to the rest of the exhibit, which at the very bottom is listed or numbered 158. Do you see page 158? It's form DSP-122.

A. Okay.

Q. This is the Supplemental Registration and Part 6 where it discusses education, that question once again asks someone to list the educational institutions, and my client listed University of Paris, and he listed the same dates as he did on the DS-230; is that not correct?

A. Yes.

Q. And then the form itself asks degree or degrees or certificates received, does it not?

A. Yes.

Q. So that is a different question than question 23 on Form 230, because that question just says degree or diploma, correct?

A. Yes.

Q. And then this question asks degree or certificate received. And the answer that is printed by my client was three years degree and then in parentheses (licence); is that not correct?

A. Yes.

Q. Have you ever been a specialist in student visas?

A. No, I wouldn't say I'm a specialist. I know that I interact with individuals on a regular basis that are here on student visas. I investigate --

Q. That wasn't my question. Have you ever dealt with the SEVP system yourself? Have you ever entered data in the SEVP system?

A. No. I have a SEVP database pass -- you know, a log-in. I'm one of the -- myself and my boss are the only persons in our office that have access to that SEVP database, but we don't enter data into the SEVP database.

**MS. ARANEDA:** Nothing further from this witness.

**THE COURT:** Any redirect?

**MR. GOULIAN:** No, Your Honor.

**THE COURT:** Thank you. You can step down. We'll recess until tomorrow.

Ladies and gentlemen, don't talk about the case or allow anyone to talk to you about it. Leave any notes you have in the jury room. They'll be secure, and we're going to start tomorrow at 11:00. So if you'll be here at 11:00 tomorrow, we'll resume with the trial. Remember, you're just in the middle of the trial now, so keep your mind open. The Court will be in recess until 11:00 tomorrow.

(Court recess 5:04 p.m.)

(Court resumed 11:05 a.m., 4/28/16)

**THE COURT:** Good morning. Are you ready to resume?

**MR. GOULIAN:** Yes, Your Honor.

**THE COURT:** Bring the jury in.

Good morning, ladies and gentlemen. Thank you for being here. Call your next witness.

**MR. GOULIAN:** Yes, Your Honor. The government calls Gary Freitas.

**GARY FREITAS, GOVERNMENT'S WITNESS, SWORN**

DIRECT EXAMINATION

**BY MR. GOULIAN:**

Q. State your full name for the record, please.

A. Gary Stewart Freitas.

Q. How are you employed?

A. I'm a Senior Immigration Services Officer with United States Citizenship and Immigration Services at Raleigh-Durham Field Office.

Q. That agency is known as CIS; is that correct?

A. Yes, it is.

Q. How long have you worked for CIS?

A. Eight years now.

Q. And what did you do prior to that?

A. Prior to that I was ten years with the Immigration and Naturalization Services, Immigration Inspector, and then also converting into Customs and Border Protection as an officer.

Q. And in your time with CIS, what have your general duties been?

A. I adjudicate applications for immigration benefits, which include naturalization, applications for permanent residency, waivers of inadmissibility and other miscellaneous immigration benefits.

Q. And in that capacity are you familiar with the legal requirements and processes for gaining admission into the United States and naturalization?

A. Yes, I am familiar.

Q. And do you conduct naturalization interviews? Have you done that?

A. I've done it and still do it as a normal part of my duties. Previously I conducted about 30 to 40 interviews per week. Right now I do just about five a month, but I'm doing the appellate type of a hearing, the second hearings for naturalization after someone has been denied already.

Q. And the 30 or 40 -- when you were doing 30 or 40 a week, over what period of time were you doing that?

A. Between -- that was about 2012 to 2014.

Q. Two or three years?

A. Yes.
Q. Now you're familiar with something called the Diversity Lottery Program?
A. Yes, I am.
Q. Explain that to the jury.
A. The Diversity Lottery Program was set up by Congress, and it's part of the Immigration and Nationality Act. It allows individuals from countries that have historical low immigration numbers to the United States and allows them an opportunity to apply to obtain an immigrant visa to live here permanently.
Q. And is there a limit on the number of people who are granted visas under this program?
A. Yes. Initially Congress set it up for 55,000 per year. It is at 50,000 now because 5,000 is allocated to a different type of immigrant visa. The State Department administers the program and the lottery.
Q. So of that 50,000, are they allocated among different countries by different formulas and numbers?
A. Yes. They are allocated by region, and it's by continent and split into countries, and each country has a different percentage of the visas based upon their previous five years of historical immigration into the country.
**THE COURT:** You're saying that Congress has set up a law that your agency enforces that invites people to come to

America from places where they don't normally come to America?

A. Yes.

**THE COURT:** That's a shorthand way of saying it?

A. Yes, it is.

**THE COURT:** That's incredible. And the reason that they don't come to America is because they haven't tried to come to America? Is that it?

A. Usually because of -- they may not have family members here from those countries or employment opportunities.

**THE COURT:** So the main countries that send people to America I'm assuming would be Mexico, Canada, Latin America, Central America --

A. India.

**THE COURT:** India. Not China, not Japan?

A. China, yes.

**THE COURT:** Japan?

A. Japan is --

**THE COURT:** To a lesser extent; the Philippines, to a larger extent.

A. A larger extent, yes.

**THE COURT:** And you're talking about the hundred countries that nobody could name if they had a list of 180 countries in the world?

A. Yes.

**THE COURT:** The bottom hundred.
A. Yes.
**THE COURT:** Like Mauritania.
A. Exactly.
**THE COURT:** Moldavia or something like that.
A. Correct.
**THE COURT:** And Congress is aggressively trying to bring those people to America by creating a lottery where they have special treatment?
A. The set up the lottery. It's -- I'm not sure what the percentage overall of between total immigrants that immigrant into the United States per year.
**THE COURT:** Aren't there quotas on people coming from countries that send a lot of people here, and you have to show you're a doctor, an engineer or a rocket scientist or someone who is going to contribute to the well-being of the United States of America and make it a better place to live because of your skill or personal characteristics?
A. Yes, there are limits on those.
**THE COURT:** But if you're in the bottom hundred countries in the world, just come on.
A. Well, they can apply for the lottery. They get a chance.
**THE COURT:** But they don't have to be a back surgeon or anything?

A. No, they just need minimum qualifications equivalent to a high school education.

**THE COURT:** Okay. Do you think anybody in America knows about this, other than the Committee that sent it through Congress. Probably not.

A. I didn't know it before I started --

**THE COURT:** And it's your job. Don't you love Congress? I mean, unbelievable, unbelievable. I'm sitting here 32 years, first time I ever heard this. Go ahead.

Q. Agent Freitas, would you look at Government's Exhibit [23] in the notebook. Do you recognize that?

A. Yes, I do.

Q. What is it?

A. It's the fiscal year 2010 diversity visa program, the numbers of entrants separated by country.

Q. You said this is for fiscal year 2010; is it 2012?

A. 2012, excuse me, yes.

Q. And 2010 is the calendar year in which Mr. Lefsih received his visa; is that correct?

A. Well, in the fiscal year which started October 1st, 2009 through September 30th, 2010.

Q. This was the data from the following fiscal year?

A. Yes.

Q. And it was each of the countries that were awarded slots in the program?

A. Yes.
Q. It lists them alphabetically starting with Afghanistan through --
**THE COURT:** Zimbabwe.
Q. Zimbabwe.
**THE COURT:** Don't take my word for it; is that true? It might be Zaire.
A. Zimbabwe, yes.
**THE COURT:** Like on Jeopardy. You know you just guess if you don't know the answer.
Q. So, Mr. Freitas, referring to Algeria, Mr. Lefsih's home country, what does it show the number of -- well, it lists entrants and then there are derivatives and total. Can you explain that breakdown?
A. Entrants are principal lottery applicants. The derivatives would be their family members, such as a spouse or children. So they're not a principal applicant, they're not actually applying for the lottery. The principal would be the entrant.
Q. But the dependents count for the total amount, number of people allocated to each country; is that right?
A. Yes, they would count against each visa that's given out.
Q. And what does Government's Exhibit [23] show is the total number of applicants from Algeria for fiscal year

2010.
A. So it was 90,704.
Q. And for fiscal year 2011-2012?
A. 2011, it was 88,004 and for fiscal year 2012 it was 112,081.
Q. And that's applicants, correct?
A. Yes, including the derivatives.
Q. So this Government's Exhibit [22] doesn't show the number of visas actually awarded?
A. No.
Q. So turn to Government's Exhibit [24]. Does Government's Exhibit [24] contain that information?
A. Yes. There's a chart that's containing the 2010 green card lottery diversity visa results and statistics.
Q. And what does it show as the raw number of winners, as the term is used in Government's Exhibit [24], for Algeria?
A. So for that year of 2010 it was 1,957 winners.
Q. And does the chart indicate what percentage of the total entrants that is?
A. Yes. It was 2.16 percent.
Q. And then there's the column on the far right. It says, World Wide Winning Odds Per 10,000.
A. It was 1.439 per 10,000.
Q. So that would be the percent based on the total number of applicants, 1.439?

A. Yes.

**THE COURT:** So if you get lucky and win the lottery and get a card to come to America you can drag along your ten kids and four wives or what?

A. Well, your spouse.

**THE COURT:** Your spouse and your kids and your uncle and your brother?

A. No, no, just immediate.

**THE COURT:** Your immediate nuclear family?

A. Yes.

Q. Now winning the lottery, does that guarantee you admission into the United States?

A. No. You still have to go through the application process with the State Department and that you meet their eligibility requirements of a high school degree.

**THE COURT:** Good moral character?

A. Yes.

**THE COURT:** You can't be at war with the United States?

A. No.

**THE COURT:** That would disqualify you?

A. Yes.

Q. So when someone is granted admission to the United States under this program, what status do they have in the United States?

A. They would be considered a permanent resident alien of

the United States.
Q. And is there any expiration date or time limit associated with that status?
A. No, they could remain under that status for the duration of their life.
Q. And does that carry with it also the possibility of applying for naturalization?
A. Yes, of course.
Q. So what are the eligibility requirements then for someone who's a permanent resident to apply for naturalization?
A. The general requirements would be that they must be 18 years of age, that they meet basic English and civics testing requirements. They would have to demonstrate good moral character and attach to the principles of the constitution. And then also meet three residency requirements: five years of general residency, continuous residency in the United States, half of that being physically present in the United States and then 90 days prior to the application they must have resided in the state or the CIS district that would govern their application.
**THE COURT:** So you could be here for a period of time, go back to your country of origin, stay there for awhile, and come back here as long as more than 50 percent of the time

in five years was in America?
A. Yes. However, you would not be able to stay outside the United States for more than a year, and that would disqualify.
**THE COURT:** So you go to Iraq for 11 months and you come back and that's still within the five year period?
A. Yes. Anything over a year would stop the time, between six months and a year, we would now look at whether you had abandoned your residence during that period.
Q. Now you referred to the good moral character requirement, that comes from the law passed by Congress?
A. Yes, as part of the Immigration and Nationality Act.
Q. And what about proficiency in English?
A. That's also contained in the law.
Q. And what about proficiency in civics?
A. That's contained in the law as well.
Q. And when -- what's the earliest date which you can submit the application for naturalization?
A. You can submit it 90 days before you meet your five year residency requirement.
Q. So you don't have to wait until the five years are up?
A. No. You can apply 90 days early.
Q. Now you are familiar with Mr. Lefsih's immigration file; is that correct?
A. Yes.

Q. You've reviewed his naturalization application in the file and other related documents?
A. Yes, I have.
Q. Now what was the initial disposition of his application by CIS?
A. He was initially approved.
Q. Well, I'm sorry. Going back to when it was first -- would you refer to Government's Exhibit [3].
A. When he initially submitted it, it was submitted more than 90 days early, so our agency rejected the application and sent it back to him.
Q. And is Government's Exhibit [3] the rejection notice?
A. Yes, it is. There's a notice that's sent to him with his application.
**THE COURT:** How far in advance was it?
A. It was a couple -- about two weeks or so.
**THE COURT:** Okay.
Q. So the actual form he had submitted was sent back to him?
A. Yes, the form with the notice stating why it was being rejected.
Q. And then he resubmitted it?
A. Yes, he did.
Q. Within the 90 day period?
A. Yes.

Q. Now just speaking generally here, what happens in your agency after the application is received?
A. Once it's received it goes into our National Benefits Center where they initiate requests for -- request notice for the applicant to appear for fingerprinting. That's usually sent out within a few weeks of receiving the application. And then once the fingerprints are conducted, background checks are initiated on the application prior to it being scheduled for an interview at the field office.
Q. And what type of a background check would that be?
A. There's three background checks. It's an FBI name check, an FBI fingerprint check, and then it's called a text check, and we run the names through a system that's governed by the U.S. Customs and Border Protection.
Q. And what is the purpose of conducting these checks.
A. To solicit any -- if there is any derogatory information in the applicant's background.
Q. Well, what type of derogatory information do these checks reveal?
A. Things such as a criminal record.
**THE COURT:** Internal Revenue problems, things of that sort?
A. It could, yes, it could entail that, or encounters at the border or arrests at the border, ports of entry.
Q. And do those checks typically reveal citations?
A. No. The FBI name check or the fingerprint check

usually only includes information from law enforcement agencies that are sent to the FBI and submitted to them. So a lot of county or city municipal law enforcement agencies that stop someone for maybe a speeding ticket or a minor infraction, even a misdemeanor, they may not submit it into the FBI, so we would not see that.

Q. But, nevertheless, that information is asked for on the N-400 form; is that correct?

A. Yes, it is.

Q. Turning to Government's Exhibit [1], is the N-400 submitted by Mr. Lefsih, that information is asked for in question 23 of the form, on page 15; is that correct?

A. Yes. That's where it's located.

Q. Prior to that, there are instructions for questions 22 through 28. And is it fair to say questions 22 through 28 all address the individual's interactions with law enforcement or the judicial process?

A. Yes, it does.

Q. Now if the applicant responds yes to any of those questions, then what additional information do they have to provide?

A. Normally it would trigger other questions from the adjudicator.

Q. But before we talk about the interview, what about on the form itself.

A. On the form a yes would indicate that they may have to provide court dispositions or arrest reports with their application.

Q. That's in question 29; is that correct?

A. Yes. They would list out why they were arrested, cited, detained or charged and the dates.

Q. Well, if you could read through each of the boxes in each column on question 29.

A. The first column asks why were you arrested, cited, detained or charged. The second, date arrested, cited, detained or charged. The third column reads, where were you arrested, cited, detained or charged; and the fourth column reads, outcome or disposition of the arrest, citation, detention or charge.

Q. And then there's some explanatory information in italics?

A. Yes. And it states, no charges filed, charges dismissed, jail, probation, et cetera.

Q. Now this all goes toward the determination by your agency as to whether the person is of sufficient good moral character to gain admission or naturalization; is that correct?

A. Yes. We require the information so that we can determine whether he meets the good moral character requirement. And it provides him the opportunity to

establish that to us.
Q. Now specifically with regard to citations, how would that information potentially affect the decision making process?
A. Citations could be for a variety of issues, even including traffic issues. We do look at those because they may include bodily injury, drugs or alcohol related event as well as the fine could be over $500 where they are required to submit a disposition form. And it may also show a history of wanton disregard for the law if it's multiple times over a short period of time for the same offense.
Q. And what about failures to appear for court? Would that potentially be of significance?
A. Yes. Again, it would relate to their -- either disregard for the law. And we would also look at whether they complied with any court actions that required, say, probation or a fine, or to take classes.
Q. So failure to pay a fine would potentially affect the adjudication process?
A. Yes.
Q. Now, so you're saying the application is received and then at some point these record checks are done, which you talked about, and then the applicant is asked to come in for an interview; is that right?

A. Yes. And that would all be done at the National Benefits Center and not by the local field office.

Q. Well, the interview is not done at the National Benefits Center?

A. No. They schedule it, they issue the notice. Once the notice is issued they forward the file to the appropriate field office.

Q. Where are they located?

A. They are in Missouri, right outside of Kansas City.

Q. And so then once it is forwarded to the field office, what happens then?

A. The file will await the interview date, and once the date is there we would -- the applicant, if they show up, we would interview them.

Q. And where does the interview take place?

A. We have offices in our building that each adjudicator is assigned to, and that's where we conduct our interviews.

Q. And can you just explain generally the interview process, how that works?

A. Normally we pull cases by random based upon the time that they arrive. When we meet the applicant we bring them to the office. Once inside the office it's usually customary that we swear them in under oath while they're still standing. Once that's completed, both the applicant and officer take a seat, and we commence the interview process, usually starting with the testing.

Q. And what does the testing consist of?

A. It consists of an English reading test, English writing and then a general civics on U.S. Government and history.

**THE COURT:** And this is in Durham where the regional office is?

A. Yes.

**THE COURT:** For this case?

A. For our field office, yes.

Q. Would you look at Government's Exhibit [8]. Identify that, please.

A. This exhibit is our civics and history test. It's a little hard to see. It looks like this was Mr. Lefsih's test.

Q. Would it help to see the original from the immigration file?

A. Yes, to make out the notation.

Q. Do you have that in front of you?

A. Yes, I do. Yes, it is his test. And which it shows a passing score.

Q. So this is the History and Government Civics Test?

A. Yes, it is.

Q. This type of test is administered to all the applicants?

A. Every applicant, yes.
Q. Could you just read the questions that were asked Mr. Lefsih on his test and responses.
A. The first question, "There are four amendments to the Constitution about who can vote. Describe one of them." And the answer is, "Citizen 18 and over."
The second question is, "Who is in charge of the Executive Branch?" And the answer is, "President." For the third one, "During the Cold War what was the main concern of the United States?" And his answer was, "Communism".
Fourth question, "What is one right or freedom from the First Amendment?" And he answered, "Speech".
Fifth question, "What is one reason colonists came to America?" And he answered, "Freedom."
And the sixth question, "If the President can no longer serve, who becomes President?" And he answered, Vice President."
Q. And all of his responses are correct?
A. Yes, they are.
Q. That was marked by the adjudicator?
A. Yes, it was.
Q. And there are some additional questions on that format that were not asked of him?
A. Yes. The requirement is that they must pass six out

of the ten questions.

Q. So he answered correctly the first six?

A. Once he answered the first six we stopped the questions.

Q. Okay. And then if you will turn to the second page of Government's Exhibit [8], what is that?

A. This is the English writing test, so this page shows what we orally say to the applicant and on the next page, number 65, that's the sheet that we give to the applicant, and he writes what the officer states from the first sheet.

Q. So what was the -- what was the writing sample read to Mr. Lefsih from the second page of Government's Exhibit [8]?

A. So in this case the writing sample that was told to him was "California has the most people." And on the sheet that he was required to write it on, he wrote, "California has the most people." And the response was correct written English.

Q. And then moving on to the third page of Government's Exhibit [8], what is that test?

A. That's the reading test in which we place this sheet in front of the applicant, and they must read the question verbatim.

Q. And what was the -- does it indicate what question Mr. Lefsih read?

A. Yes. The question was, "What state has the most people?" And it's marked that he read it correctly.
Q. So the purpose of that was not -- he didn't subsequently answer the question?
A. No, just to read it.
Q. So what else is done during the naturalization interview?
A. So after doing this general testing we get into reviewing the application with the applicant. And during the review we are also determining whether they can communicate in English, which is understanding, speaking, and that they are able to answer all of the questions that we ask off of the application.
Q. So are the examiners trained or instructed to mark certain questions in a red pen?
A. Yes. So when we're going through the application, we're not mandated to ask every question off the application except on the last page where it has the attachment to the Constitution, questions 47 through 52 and 53. Those we must ask each individually verbatim. But throughout the rest of the application we ask questions, and we mark with a red ink pen what questions we ask. And we usually put a check mark next to it, and if there is any changes that the applicant gives us that's different from what's on the application, we'll write in a change and

notate it with a number.

Q. Now there are several changes that were indicated on Mr. Lefsih's form; is that correct?

A. Yes, there were. One of the changes was to a middle name, that first change that was crossed out. And the second change was there was no answer to a question that stated, would you like to legally change your name, so the officer checked the box no, which means that she asked the question because it's in red ink, and he answered, no, so she checked the box.

The third change was on page 6 of the application in the employment section. She wrote to see Supplement 1. Supplement 1 had additional information, so she marked it number 3. And in the area about where the application asks about your children, the application, as it was submitted, didn't have a number, so she wrote in zero and notated number 4, which means she asked him whether he had children, and he answered no.

And the fifth change was on question number 53 where it's asking at a naturalization ceremony are you willing to give up any inherited title or orders of nobility that you have in a foreign country. It was marked yes on the original when the application was submitted, but that question did not apply to him, so she crossed it out and notated it, 5.

Q. And you referred previously to a supplement?
A. Yes. So in the employment section when she was going through the questions it appears that she asked him about any current employment or schooling. On the supplement she wrote notes, which state, 2013 to present, employment or schooling, and it states, North Carolina State University, Raleigh, North Carolina, student.
Q. So that information was added at the interview that he was a student at NC State?
A. Yes, it was.
Q. Now referring specifically to question 23 in Part 11, "Have you ever been arrested, cited or detained by any law enforcement officer for any reason", does the form have markings indicating whether or not he was asked that question at the interview?
A. Yes. There's a red check mark that's over the no answer, which means that the officer asked the question, and the audible response was "no".
Q. Do the applicants have the opportunity to ask for clarification or explanation of terms used in the application during the interview?
A. Of course.
Q. And is there any indication on the form as to whether Mr. Lefsih did so?
A. No. There is only the check mark which shows that he

gave an answer to that question.
Q. So then after the interviewer has gone through going over the questions on the form, then what happens?
A. When we get to the end of the form, there's an area in which we have the applicant sign as well as the officer attesting that the statements that they gave us and any changes made to the form were true and correct.
Q. Are you referring to Part 15?
A. Yes, I am. Signature at Interview.
Q. Would you read what the person signed to?
A. Sure. It states, "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this Form N-400, Application for Naturalization, subscribed by me, including corrections number 1 through 5 are true and correct. The evidence submitted by me on pages 1 through 1 is true and correct. And it's signed by Cheryl Buckley, USCIS Officer on November 30th, 2015 and then by Mr. Lefsih.
Q. So, again, referring generally now, what happens after the interview after the person has signed that portion of the form?
A. That portion of the form, once it's completed we move to the next page, which is on page 21, and the applicant reads the Oath of Allegiance and signs that he agrees to take the Oath of Allegiance on the date of the ceremony.

Q. So the Oath of Allegiance is not actually administered during this interview?

A. No, it's not.

Q. And what happens next?

A. Once that's completed, we give the applicant a Notice of Interview Results form, and then they usually either await appointment notice for a naturalization ceremony if they are preliminarily approved. It either will come in the mail or in person that day. From there the file goes to another officer that conducts a reverification process, and that reverification process verifies that the interview and the form and its contents were processed according to our standard operating procedures.

Q. And then the applicant is scheduled to take the Oath of Allegiance?

A. Yes, during a naturalization ceremony.

Q. So what was the initial disposition of Mr. Lefsih's application?

A. So it was initially approved on November 30th, 2015.

Q. That's the date he was interviewed?

A. Yes, that was the date he was interviewed. And I believe it went through the reverification process that same day, if I can find it here. Yes, it went through a reverification process that same day.

Q. And then what happened?

A. From there he was scheduled to appear at a naturalization ceremony.
Q. But he did not end up appearing at that ceremony; is that correct?
A. No. CIS got information from Homeland Security investigations that he had been arrested, and we had gotten the file back.
Q. In connection with the charges in this case?
A. In connection with the charges for this case. And the file was assigned by my supervisor to me to issue a notice of intent to reopen, Notice of Motion to Reopen with Intent to Deny, including the information that was found by Homeland Security investigations.
Q. So Mr. Lefsih was then provided a notice of, you said, intent to deny the application?
A. Yes. So once -- when an application is preliminarily approved, from that point up until they take the Oath of Allegiance if any derogatory information comes about that CIS finds out about, then we motion to reopen the application with an intent to deny, notifying the applicant of any derogatory information and providing them a 15 day period to respond back with information or documentation to overcome the derogatory information.
Q. And is a copy of that notice contained in the immigration file?

A. Yes, it is.
Q. And does it indicate that it was served on Mr. Lefsih?
A. Yes. It was served on Mr. Lefsih on December 17th in person by Special Agent Tony Bell.
Q. Was the notice giving him an opportunity to respond?
A. Yes. The notice that was issued on that date gave him an opportunity to contact USCIS in writing within 15 days of the notice of this motion with your response to the derogatory information contained in this notice.
Q. Did Mr. Lefsih submit information in response to receiving that notice?
A. No. No information was received.
Q. And then what was the ultimate decision by your agency?
A. So we did not receive any information within the 15 days or by January 21st, 2016. On that date we issued a decision denying his naturalization application.
**MR. GOULIAN:** If I could have one moment, Judge. No further questions.
**THE COURT:** Any cross?
**MS. ARANEDA:** Yes.

CROSS-EXAMINATION

**BY MS. ARANEDA:**
Q. Good afternoon, Mr. Freitas.
A. Good afternoon.

Q. You are familiar with the student visa, the F-1, within the immigration area; is that correct?
A. Yes.
Q. With the F-1 visa, is it not true that if a foreign national comes in with an F-1 visa, that person is required to go to the school with which they received a certain form in order to come in on a student visa; is that correct?
A. Yes.
Q. So when a school accepts someone with a student visa, is the form not called I-20.
A. Yes. The school that issued that form to the applicant.
Q. Okay. So if someone comes in with a student visa and they have that Form I-20, they can only go to that school and cannot just on their own go to another school; is that correct?
A. Yes. They would have to obtain permission from the school to transfer.
Q. All right. And isn't it also true that if someone comes in with a student visa that that person also cannot just work in any type of job; is that not correct?
A. No, generally, no. They would have to have permission.
Q. And is it also not true that if someone shows an intent to immigrate that they could be denied a student

visa or the transfer of a student visa?

A. I don't know about the transfer, but they could be denied at the visa process or at the port of entry when they're entering the country.

Q. And is it also not true that students who come in with the F-1 visa cannot be part-time students; they must be full-time students?

A. Yes, full-time students.

Q. And is it not also true in North Carolina that students with the F-1 visa cannot pay in-state tuition?

A. I do not know that information.

Q. Okay. When a person gets a green card for permanent residence from this country, a special application generally has to be filed. It's called the I-485 form; is that correct?

A. Yes, that's correct.

Q. And are you familiar with the Form I-485?

A. Yes, I am.

**MS. ARANEDA:** If I may approach, please.

**THE COURT:** Okay.

Q. Could you please identify that form?

A. This is a Form I-485 application to register permanent residence or adjust status.

Q. Would you please turn to page 3? And would you please look at Part III at Question 1?

A.   Yes.
Q.   And would you please just read the words right after number 1?
A.   Have you ever, in or outside the United States, knowingly -- a., knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested.  b., been arrested, cited, charged, indicted, convicted, fined, or in prison for breaking or violating any law or ordinance, excluding traffic violations.  c., been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action.  d., exercise diplomatic immunity to avoid prosecution for a criminal offense in the United States.
Q.   Okay.  So after each of those items, a, b, c, and d, are there blocks where one can check yes or no?
A.   Yes, the applicant can check either yes or no.
Q.   And is it not true that Mr. Lefsih did not complete this form because he came in through a different process but obtained the same result as a permanent resident?
A.   Yes, he didn't use this form.
Q.   Okay.  Are you also familiar with the Form N-445, which is the Notice of Naturalization Ceremony?
A.   Yes, I am.
**MS. ARANEDA:**  If I may approach, Your Honor.
**THE COURT:**  Okay.

Q. Could you please identify this document.
A. It's a N-445, Notice of Naturalization of Oath Ceremony.
Q. All right. And would you please describe what this form is?
A. This is a notice sent to the applicant to advise them of their appointment date for a naturalization ceremony.
Q. All right. And would you please -- on the form it has location, and in this particular form, would you just summarize the address? This is for which office?
A. This is for the USCIS Raleigh-Durham Field Office, and it's at 301 Roycroft Drive in Durham.
Q. And right below that there is a sentence with four little points. Would you please read the sentence and all four points?
A. Sure. It says, "Please bring the following with you: This notice with the reverse side completed. Please refer to instructions on the reverse side.
Your Permanent Resident Card (green card).
All Reentry Permits or Refugee Travel Documents you may have, valid or expired.
Any other documents USCIS issued to you.
Q. All right. Would you please turn the page and look at page 2? And would you please read question number 4?
A. "Since your interview have you been arrested, cited,

charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance, including traffic violations?" With check boxes, yes and no.

**MS. ARANEDA:** All right. Your Honor, I would like to move this exhibit into evidence, and I would like to publish it to the jury.

**THE COURT:** Okay.

Q. Officer Freitas, the Form N-400, the Application for Naturalization for Citizenship, which is -- I believe that's Exhibit Number [1] -- would you please turn to question 22 through 28? Would you please read question 23?

A. Have you ever been arrested, cited or detained by any law enforcement officer, in parentheses, (including any and all immigration officials or the U.S. Armed Forces), end parentheses, for any reason.

Q. Now that question 23 is different from the question that you just read from the 485 application; is that not correct?

A. Yes, that's correct.

Q. And those words are also different from question number 4 of the Notice of the Oath Ceremony; is that not correct?

A. Yes, that's correct.

Q. And on the oath ceremony question 4 very specifically asks if the person has been cited or fined for violating

any law or ordinance, including traffic violations, correct?
A. Correct.
Q. And is it not true that question 23 of the N-400 does not use those terms, correct?
A. It doesn't use -- yes, it doesn't use some of the terms.
Q. All right. And when you say, some of the terms, question 23 does not use fine; is that correct?
A. Yes, it doesn't use fine.
Q. And it doesn't say for violating any law?
A. Yes.
Q. And question 23 does not say for violating any ordinance?
A. Yes.
Q. And question 23 does not say, including traffic violations, correct?
A. Yes.
Q. Then if we could go to the N-400, page 18 -- I'm sorry, page 20, where it says Part 15, concerning your signature at the interview. Would you please read that little paragraph?
A. Sure. "I swear (affirm) and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this Form N-400 Application for

Naturalization, subscribed by me, including corrections number 1 through 5, are true and correct. The evidence submitted by me on numbered pages 1 though 1 is true and correct."

Q. Okay. And that does not include the word, Oath, correct?

A. No, it doesn't.

Q. And then if you'll go to Page 18, Part 12, where it says, Your Signature. Could you please read what it says below that starting with, Your Statement?

A. "I certify under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it, are all true and correct. I authorize the release of any information USCIS needs to determine my eligibility for naturalization."

Q. Okay. And that also does not say the word, Oath, correct?

A. Correct.

Q. Okay. And, Officer Freitas, you're also familiar with the USCIS Policy Manual, are you not?

A. Yes.

Q. And are you familiar with Part F concerning good moral character section?

A. Yes. I don't have it in front of me, but --

**MS. ARANEDA:** If I may approach, Your Honor?

**THE COURT:** Yes.

Q. Okay. So looking at Item 12, that references good moral character, correct?

A. Yes, it does.

Q. And isn't it true that the policy manual defines good moral character as character which measures up to the standards of average citizens in the community in which the applicant lives?

A. Yes.

Q. Sorry?

A. Yes.

Q. And are you also familiar with the specific findings of when a lack of good moral character can be found?

A. Yes, I am.

Q. Okay. So, for example, if a person is convicted of murder at any time, is that -- would you then find that that person lacked good moral character?

A. Yes.

Q. And that is specifically included?

A. Yes.

Q. Okay. If a person is convicted of an aggravated felony, as defined under the Immigration Act, that would also cause a person to not have good moral character, correct?

A. Yes, correct.

Q. And then concerning good moral character there is also a section that looks toward the statutory period, correct?
A. Yes, it does.
Q. Okay. And the statutory period covers the time from which a person -- for example, if someone is applying for permanent residence, based on five years, they look at five years prior, correct?
A. Yes.
Q. And that's considered the statutory period?
A. Yes.
Q. So anything that happens within that five year period would be included?
A. Yes.
Q. And isn't it true that if a person commits one or more crimes involving moral turpitude a person would be found to lack good moral character, within the statutory period?
A. Yes.
Q. Okay. And if a person committed two or more offenses, for which an applicant was convicted, and the aggregate sentence actually imposes five years or more, would that also prevent the person from having -- lack good moral character?
A. Yes, it would.
Q. And so the code has an entire list of different offenses which prevent a person from having good moral

character, correct?
A. Yes, it does.
Q. And so the code in the end for the statutory period has 12 different offenses; is that correct?
If I may approach, Your Honor.
Okay. So going to Section 316.10, good moral character, it's broken down into subsections, and subsection (b), that's the one where an applicant has to be found to lack moral character, and there are two offenses: a person who has been convicted of murder at any time or convicted as an aggravated felon. So this is -- this would include offenses outside of the five years, correct?
A. Yes, correct.
Q. Now the other section, which is section 2, that enumerates 12 different offenses that can preclude a person from having been found to have good moral character, correct?
A. Yes, correct.
Q. And so I was asking if a person committed one or more crimes involving moral turpitude they couldn't, if a person has been convicted and the aggregate sentence imposed is five years or more, they also can't have good moral character. If a person has violated any U.S., any state or foreign country law regarding a controlled substance, unless it's a simple possession of 30 grams or less of

marijuana, that also would preclude them having good moral character. Also, item 4, admits to having committed any criminal act as covered by certain sections, for which they have not been arrested. Is that correct?

A. Yes, that's correct.

Q. And then a person who has been confined to a penal institution for an aggregate of 180 days, that person could also not be able to have good moral character. Also a person who has given false testimony to obtain a benefit from that would also be -- could not have good moral character, correct?

A. Yes, correct.

Q. And if a person was involved in prostitution or commercialized vice, they couldn't have good moral character. Also a person who was involved in the smuggling of a person or persons may not have good moral character. Also a person who has practiced or is practicing polygamy cannot have good moral character, having several gambling offenses --

**MR. GOULIAN:** Your Honor, I'm going to object to the form of this question.

**THE COURT:** You're going through the 316.10?

**MS. ARANEDA:** Yes, I am, Your Honor.

**THE COURT:** Okay.

**MS. ARANEDA:** And this is for illustrative purposes to show the jury what the code book says are the specific items that preclude a person from having good moral character. And good moral character has been introduced into this trial as an issue, so I'm itemizing and confirming that these are the things that prevent someone from having good moral character.

**THE COURT:** Okay.

Q. So a person who has committed two or more gambling offenses, they cannot have good moral character, correct?

A. Correct.

Q. If a person derives his income principally from illegal gambling, that person cannot have good moral character?

A. Correct.

Q. And if a person has been a habitual drunkard they also cannot have good moral character?

A. Correct.

**MS. ARANEDA:** Okay. Nothing further on that.

**THE COURT:** Okay.

**MR. GOULIAN:** So --

**THE COURT:** Are you finished with your cross?

**MS. ARANEDA:** No, I'm not.

Q. So if a person is determined to not have good moral character for things that wouldn't cause them to lose their permanent residence status, a denial of the N-400 application would just cause them to lose the money that they paid, correct?

A. Yes. It wouldn't have -- it wouldn't preclude them from applying again.

Q. Okay. All right. And I also wanted to go back to some of your testimony. Earlier you were talking about the diversity visa program, and you were talking about, through the government's exhibit, the countries that are listed that participate in this program. Is it not true that there are only -- out of the whole world only five countries that are not allowed to participate -- well, actually there are a certain number of countries that do not participate into the lottery, correct?

A. Yes.

Q. And where are those countries that cannot participate in the lottery?

A. It's -- I don't have the one for like the current year.

Q. How about in North America?

A. It's like Mexico, Canada.

Q. Okay. And the reason they're not allowed to participate is what?

A. Because of the high rate of immigration from those countries.

Q. Okay. And this lottery system, do you know how long

it's been part of the American legal system?
A. It was part of the Immigration Nationality Act, I believe from 1990.
Q. Okay. And does it still exist today?
A. Yes, it does.
Q. Earlier you were testifying about how you run criminal record checks, you run three checks on people. We have two different checks through the FBI and then there's another check that essentially goes through Customs and Border Protection, correct?
A. Yes, correct.
Q. And you also testified concerning citations. And you testified that typically your citations to see if that could affect a person's good moral character, you look at whether it involved alcohol, bodily injury, drugs or damages in excess of $500; is that correct?
A. Yes.
Q. And if a person has received a ticket and they don't go to court, do you know if an arrest warrant is issued?
A. I wouldn't know, based on the court system in North Carolina.
Q. You were testifying about Mr. Lefsih and his tests that he took with the officer at his interview.
A. Yes.
Q. Isn't there a booklet that is published by the

Immigration Service for foreign nationals that list the hundred questions and have the answers?
A. Yes, it's a study booklet.
Q. Okay. And this is commonly provided to everyone who applies for citizenship, correct?
A. We don't provide the booklet when they apply. They can obtain it from our website or at the office if they come to our information counter.
Q. Okay. Concerning Mr. Lefsih's N-400 application. you pointed out five different changes. And you also testified that he left a couple things that he didn't answer, correct?
A. Yes, ma'am.
Q. So because he missed several things, isn't it true that he didn't completely, perfectly complete his application; isn't that correct?
A. Yes.
**MS. ARANEDA:** I have nothing further, Your Honor.
**THE COURT:** Any redirect?
**MR. GOULIAN:** Yes, Your Honor.

REDIRECT EXAMINATION

**BY MR. GOULIAN:**
Q. So Ms. Araneda was going over this document issued by your agency providing guidance or directives on when a -- with regard to finding of good moral character; is that

right?
A. Yes.
Q. And that document sets forth circumstances when the agency is required to find a lack of good moral character?
A. Yes, that is correct.
Q. So did that define the universal situations in which lack of good moral character may be found?
A. No. The law also allows for violations that are not included in that set of 12 for if someone commits unlawful acts that adversely reflect upon the applicant's moral character or was convicted and imprisoned for such acts, although the acts do not fall with the purview of Section 316.10(b)102. So that may include anything outside of that 12, say, if someone commits an assault. That doesn't include like aggravated factors or a DUI. Those types of things don't fall under the purview of those 12. So the law does allow us to look at other unlawful acts. And that could be any violations. It could be speeding tickets, misdemeanors for selling alcohol to minors, anything.
Q. So is it fair to say that you're allowed to consider conduct associated with an arrest or citation or conviction beyond the bare facts of that section?
A. Yes, any unlawful activity for violations.
Q. So referring specifically to Mr. Lefsih's application, in denying that he had ever been cited by law enforcement,

denying that multiple times, did that affect the inquiry that the agency can make somehow?

A. Well, it prevents us from establishing a line of inquiry into the circumstances of what happened with the detainments, whether there were any arrests or not, whether he appeared in court, whether he was found guilty to any of the charges, what type of charges were they and whether, based on the charges, was he required to provide arrest reports and court dispositions to us.

Q. Would the agency, either specifically the person interviewing him or anyone else at the agency, have any reason to question the accuracy of a response he gave on a form? Is there any mechanism readily available to confirm the accuracy of it?

A. No. The type of criminal history checks that were done by the investigators we don't have access to. So when we interview someone and take testimony from them, we take them at their word for what they tell us.

Q. Ms. Araneda asked you if the word oath appeared in the N-400 form, and I believe you said it did not, referring to where he signs and attests to the accuracy of the statement, but in the interview, was an oath administered prior to him signing?

A. Yes, an oath is administered to everyone.

Q. And an oath to do what?

A. An oath to swear and affirm that all the statements you're about to say are true and correct.

Q. Ms. Araneda also showed you two forms referring to arrests and citations, one which says, excluding traffic violations and the other which says, including traffic violations. Now neither of that qualifying language is on the N-400 form; is that correct?

A. Yes.

Q. So without that qualifying language referring to question 23 on the N-400 form, have you ever been arrested, cited or detained by any law enforcement officer for any reason? On the face of that, would that include or exclude traffic violations?

A. That would include traffic violations.

**MR. GOULIAN:** No further questions.

**THE COURT:** All right. Thank you. You can step down. You have another question?

**MS. ARANEDA:** Just very briefly.

**THE COURT:** All right. You can ask them.

RECROSS-EXAMINATION

**BY MS. ARANEDA:**

Q. Officer Freitas, you were testifying about the FBI results on name checks and fingerprints. If anyone had a criminal arrest, there would be a hit on the FBI; is that correct?

A.   Not --
Q.   For arrests?
A.   Not all the time.  It depends.  My experience with the results of it over the years that I've worked with Customs, Immigration, now CIS, is that if a law enforcement agency, if it's municipal or county or state, does not report that arrest to the FBI and includes it in their submission to the FBI, it wouldn't show up on our FBI fingerprint results.
Q.   But in this particular case the FBI report came back that there was no criminal record, correct?
A.   Yes.
Q.   Okay.  And concerning the N-400, Page 18, Part 12, where a person has to sign, Part 12 is not signed in front of the immigration officer; is that correct?
A.   Yes, that's correct.
Q.   That is signed when the applicant completes it before immigration gets it, correct?
A.   That's correct.
**MS. ARANEDA:**  Nothing further, Your Honor.
**THE COURT:**  All right.  Thank you.
**MR. GOULIAN:**  Your Honor, if I could put into evidence one document   The witness has already discussed it.  I just want to ask him to identify it.
**THE COURT:**  All right.  He may want you to look at

something.

A. Okay.

**MR. GOULIAN:** I just need to mark it.

**MS. ARANEDA:** Your Honor, this is not on the list of exhibits.

**MR. GOULIAN:** It was not on my original exhibit list, but I asked him about it. I was just going to have him identify it.

**THE COURT:** All right. You can do that.

**MR. GOULIAN:** So it will be Government's Exhibit [25].

Q. Can you just identify that, please?

A. This is the notice which confirms that Mr. Lefsih was served with the Motion to Reopen Application for Naturalization with Intent to Deny. It's both the service notice and the actual notice.

Q. You testified about this document previously?

A. Yes, correct.

**MR. GOULIAN:** The Government would move Exhibit [3], [8], [21], [23], [24] and [25] into evidence.

**THE COURT:** They're received.

**MR. GOULIAN:** And if I could confirm with the Clerk that [22] is already in evidence?

**COURT CLERK:** [22] is already in.

**MR. GOULIAN:** No further questions for this witness. And if I could just review. We have no further witnesses, Your

Honor. I just need to review to make sure all our evidence is in.

**THE COURT:** Yes. You can step down.

**MR. GOULIAN:** The Government rests.

**THE COURT:** All right. We'll take our luncheon recess until 1:55. If you'll be back in the jury room at five minutes to two, we'll resume with the trial.

(Jury out 12:25)

**THE COURT:** All right. The jury is out of the courtroom. Do you have a motion you want to make?

RULE 29 MOTION

**MS. ARANEDA:** Yes, I do, Your Honor. I have a Motion for Judgment of Acquittal, and bear with me, Your Honor. My client has been indicted on two counts under 18 U.S.C. 1015(a), one is for having signed the N-400 and mailed it in. And then the other offense relates to the actual interview. Concerning that, the elements are that he made a false statement under oath, acted knowingly and it was made on an immigration application. The government has not been able to establish that he made the statement under oath. Neither have they been able to establish that he made it knowingly. So I ask for those counts to be dismissed.

And concerning 18 U.S.C. 1546(a), the elements are that my client made a false statement under oath, acted knowingly, the statement was material, and it was made on the N-400. And his acts are by signing and sending in the N-400 and then statements made at the N-400 interview. Once again, they have not established that when he signed and mailed in his N-400 it was done under oath. Neither have they been able to provoke elements to show that he acted knowingly. So I ask for a judgment of acquittal on all four counts, Your Honor.

**MR. GOULIAN:** Your Honor, as to the under oath issue, I would refer the Court to United States v. Mensah, 737 F.3d 789. It's a 2013 case from the First Circuit where this precise issue was addressed. And the First Circuit held that while it was reviewing the District Court's jury instruction, which stated that the statement is made under -- in connection with the same statute, 1015, the jury instruction said statements made under oath, the defendant took an oath to testify truly before an agency authorized by law to administer oaths, or if the defendant, under penalty of perjury, subscribed as true written information submitted to the agency. And the First Circuit held that that was a proper instruction based on 28 U.S.C. 1746, which makes a statement under penalty of perjury the equivalent of an oath.

**THE COURT:** I'm not going to dismiss it at this time, but I'll take it under advisement.

**MS. ARANEDA:** All right. Thank you, Your Honor.

**THE COURT:** The case will be with you when we come back. Are you going to call any witnesses?

**MS. ARANEDA:** Yes. I'm going to call my client.

**THE COURT:** Okay. We'll be in recess until five minutes to two.

**MS. ARANEDA:** Thank you, Your Honor.

(Lunch recess 12:28 -2:04 p.m.) (Jury in courtroom)

**THE COURT:** Good afternoon. Any evidence for the Defendant?

**MS. ARANEDA:** Yes, Your Honor. I would like to call Hemza Lefsih to the stand.

**THE COURT:** All right.

**HEMZA LEFSIH, DEFENDANT, AFFIRMED**

DIRECT EXAMINATION

**BY MS. ARANEDA:**

Q. Good afternoon.
A. Good afternoon.
Q. Would you please state your full name?
A. Hemza Lefsih Menade.
Q. And where do you live?
A. I live in Raleigh.
Q. Okay. And how old are you?
A. Thirty-two (32).
Q. Where were you born?

A. I was born in Algeria.
Q. And what kind of family did you come from? Did you have parents, brothers and sisters?
A. Yes, ma'am. I do have parents, and they're still alive. And I have five brothers and three sisters.
Q. Were your parents professionals?
A. No, ma'am, they are not.
Q. And what does your father do?
A. My father is retired now, but he was not to be professional, just regular factory worker.
Q. And your mother, did she work?
A. No.
Q. She was a stay at home mother; she took care of the kids?
A. Yeah, my mother, she was born in 1940, so under the French Colony. So she didn't get a chance to go to school, and she has been staying at home.
Q. And your brothers and sisters, can you give us an age range from the oldest to the youngest?
A. Yes. Oldest is 45, my oldest sister, and then 40 and 38 and then 36, 34, 33, 32, is me, and then the youngest, my baby brother, 25.
Q. Okay. And where do your brothers and sisters live?
A. They live in Algeria except for one. Currently he is in Europe.

Q. And in what country is that brother?
A. He's in Italy.
Q. And what is he doing in Italy?
A. He is on a Ph.D. scholarship in Italy.
Q. And what does he study?
A. Biochemistry.
Q. Okay. And did you go to high school in your country?
A. Yes, ma'am, I did.
Q. And did you go to the university in your country?
A. Yes, I did.
Q. And for how long did you go to the university?
A. I went to university in Algeria from 2002 -- that was the year I got my high school degree -- until 2004, like two years.
Q. And what did you study at the university?
A. It was electronic major, but I was in general education. I just finished the two first years of general education, but major was electronics.
Q. So did you receive a diploma; did you graduate from that school?
A. No, ma'am.
Q. So after that program, did you go to any other university?
A. Not in Algeria. That's when I applied to go to France.

Q. So what type of visa? Did you need a visa to go to France?
A. Absolutely. I needed a student visa.
Q. And so when did you apply for a student visa to France?
A. Around 2004.
Q. Were you given the visa?
A. Yes, I was granted a student visa.
Q. And did you attend the university in France?
A. That's right.
Q. And what was the name of the university?
A. Paris VII Denis Diderot.
Q. And in what city was the university?
A. It was in Paris.
Q. In Paris, okay. And did you have to declare a major or an area of study?
A. Not initially. I went through general education, but the third year I did specify that I wanted to study physics.
Q. Okay. And were you enrolled in an undergraduate program at the university or a graduate program?
A. I was undergraduate.
Q. Undergraduate. And then later did you get into a graduate program?
A. Yes. I got my degree, the degree I received, which is

called licence, which is three years, after three years. And I was enrolled in the first year of Master.

Q. Okay. And how many different languages do you speak?

A. Total, I speak four languages, including my mother language.

Q. And what is your mother language?

A. Berber.

Q. And, Berber, is that a form of Arabic?

A. No, Berber is the first language spoken by many communities in the North Africa area. That was the original language. That is the language, actually, that mom speaks and that we speak at home.

Q. And do you know how to speak Arabic?

A. I do.

Q. And where did you learn to speak Arabic?

A. In Algeria.

Q. And did you learn any other languages in Algeria?

A. I did learn French later on when I went to high school.

Q. Any other language?

A. No.

Q. What about English?

A. English, I did study like the basic English in Algeria. And when I went to the college I did study English for sciences, specifically for like sciences, math,

physics and chemistry.
Q. So did you ever major in English as a language?
A. No, never.
Q. So what year did you decide that you wanted to apply for the visa lottery?
A. It was 2009.
Q. Okay. And where were you living in 2009?
A. I was living in a city called Villejuif, which is very next to the City of Paris.
Q. All right. And how old were you in 2009?
A. I was born in 1983, so 1983 to 2009, 26 to 27.
Q. And why were you interested in applying for the visa lottery to the U.S.?
A. Well, I heard of such a program from friends that there is a program called diversity lottery, so if you are selected then you are entitled to receive a green card, which is a permanent resident card. And it was very interesting for me, so I decided to apply for such a lottery.
Q. Okay. And why were you interested in coming to the United States?
A. Initially when I grew up I love the United States. It has always been a dream for me to come to the United States. So when I first heard of such a lottery and then it was very easy process just to get selected and then if

you win you are granted a green card. Of course, not very quickly. You have to go through a process to get the diversity visa. But the fact that I had the opportunity to get the permanent resident for me was a great opportunity. Because when you go to the website, the diversity lottery website, they have an advertisement. In their advertisement they would list, do you want to live in America? Do you want work in America? Do you want to become like as U.S. citizen? Do you want to achieve American dream, so it was very appealing for me. And it was a good opportunity, and I did take part in the process, and I got selected.

Q. Okay. And you said when you were a child you always dreamed of coming to this country. What is it about this country that seems so good to you?

A. I guess not just about me. Like most of the young men in the third world, you know, America has the reputation of being like super power, the best country in the world. Especially I was very attracted by like the freedom and the political system and especially the stability, you know, social, economic stability. And of course growing up watching all those movies and the athletes and all those performances, so it has been always a dream for me to reside and to become an American. So a lottery actually was a very appealing idea that I heard from friends, so I

decided to go through the process of registering.
Q. Okay. And before you got the visa lottery that you won, had you been to the United States?
A. Never.
Q. And why did you not try to come here before?
A. In France I had the student visa. I was not a permanent resident in France. That's the context where I was. I was enrolled in first year of Master, and I wasn't legally permanent resident. And for me coming to U.S., there are different type of visas like for student visa, but I knew in France what it looks like to be on a student visa. It's really difficult. And for me to give up, you know, the school that I had in France, I could not give this up for like a student visa, coming here and struggle, because you have very limited rights, unlike with green card. Like I said, when you go on the website you will see like huge amount of rights that you have and you enjoy just like you were a citizen.
Q. Okay. And so when you applied for the diversity visa, the actual initial step when you applied for the lottery, did you use an attorney at that time?
A. No.
Q. And why did you not use an attorney?
A. Well, first of all, let me just come back to the initial process of this diversity lottery. The initial

process you don't have to -- it is not like a competitive process to get admitted to register into this lottery. You can just go in on the website. There are very basic requirements. One of those requirements is a high school degree. And you register, and then they run a random selection electronically, and then if you get selected you win, and you are eligible to apply for the -- for the visa. So I went and ahead and applied for visa after I got selected, and then I had to fill up all the forms. And when I looked at the form and it looked very simple for me to fill it up by myself, and I did complete like all the document required because there was so many documents required, like vaccination and current record, and transcripts, college transcripts, degree received. So I could complete the form, and I got a green card.

**MS. ARANEDA:** If I may approach, Your Honor.

Q. I have handed you an exhibit. Can you tell us what this exhibit is?

A. It says Application for Immigrant Visa and Alien Registration.

Q. Is this the same application that Agent Bell and Officer Freitas discussed?

A. I believe it is.

Q. All right. And would you please explain when you received these different applications? Is this something

that you received immediately or -- explain the process in more detail, please.
A. So after I got selected, I was sent mail from -- I think it was from Connecticut where the institution that run this program is located, I think, is in Connecticut. So I was sent mail and then the mail says, Congratulations, you have been selected, and you won the lottery. So then afterward I received the application to fill out, and I did start filling out the application.
Q. Okay. And this exhibit that I have handed to you, is that your handwriting on the application?
A. I'm sorry, say again?
Q. Is that your handwriting?
A. Yes, ma'am, it is.
Q. Okay. And directing your attention to item 12, where it says your present occupation, would you please read what you filled in there?
A. Yes. So item 12 says, your present occupation.
Q. And what did you write in?
A. I wrote student, a master of physics, and I work as a teacher.
Q. And could you explain how you worked as a teacher?
A. Yes. There is another part here on the same application where I gave like a detailed description. Basically in France, yeah, this part here where it says,

occupation, if answered yes, give the job title and describe the type of work. So I did write, with recognized and professional situation such as completed. So in France, especially in Paris area, they have these institutions. They hire students from college that have like good grades. So when they hire them and then they give them like titles. They call it like papadon (phonetic), like teachers at home. So and then they got families calling them, they need people, student to come over and help their kids, their struggling kids. So that is the idea of what I was doing. So I was told to go to the home and give classes and help struggling kids from different levels. So of course you would provide what kind of classes you would teach. For me it was like sciences like math and physics and chemistry.

Q. Okay. And so was the university expensive in Paris?

A. No. The university is tuition free in Paris.

Q. It was tuition free in Paris?

A. Right.

Q. And directing your attention to question 23, would you just read from the first line your school and location. What was the school?

A. Yes. School and location: Paris VII, Denis Diderot, between parentheses (Paris).

Q. And you attended that university from what dates?

A. From 2004 to 2009.
Q. And what was your course of study?
A. Physics.
Q. And what kind of degree were you trying to get?
A. Master.
Q. But at that time you did not have a master's degree?
A. No, no. I was enrolled in the first year of master. Back in 12 it explains I was in first year of master degree.
Q. So if you'll look at the next exhibit that has been marked Exhibit [5], which is -- actually, the DS-230, Part 2. No, sorry, the DSP-122.
A. So Exhibit [5]?
Q. Yes.
A. Okay.
Q. And would you read the title of that document?
A. It says Supplemental Registration for the Diversity Immigrant Visa Program.
Q. Okay. And would you please go to question number 6 that's entitled Education under the Section b, and would you please read the first line where it states, name of educational institution?
A. Yes. Name of the education institution, Paris VII, Denis Diderot University from 2004 to 2009. And then it says, Degrees or Certificate Received. I put three years

degree and then in parentheses (licence).

Q. Okay. And so that licence, is that equivalent to a U.S. Bachelor's degree?

A. Yes, that could be the equivalent of a U.S. Bachelor degree.

Q. And that's because you had not completed your master's program?

A. Right.

Q. So you never received a master's degree?

A. I never received a master's degree in my life.

Q. Okay. All right. So you moved to the United States. Could you please tell us again what month and year that was?

A. It was 2010, November 2010.

Q. And what was the first state that you lived in?

A. New York.

Q. And how long did you stay in New York?

A. A couple months. I would say maybe four to five months.

Q. Okay. And what did you do in New York?

A. When I land in New York and then I had to work to support myself. New York is a very big city and very -- very quick paced than Paris. So I had to find a job and work and try to sustain like for maintenance, like have money and pay my rent.

Q. Okay. So what kind of jobs did you try to obtain?
A. Like anything. I tried like first of all -- when I first went to New York I tried to do anything, because I had to get money from somewhere to pay my rent. So I did work for KFC for like a month or so. And then I tried to look about what I really want, which is going to school, and I started asking questions where -- how could that be possible. And then very soon I realized that after I lived a couple of months I realized how the cost of life is very expensive and the education in New York also is very expensive. So that's where I have decided to move somewhere else cheaper.
Q. Okay. And what state did you move to?
A. North Carolina.
Q. And who told you about North Carolina?
A. He was the instructor of driving school. When I went to New York very close to where I lived there was a driving school, so I went there to learn how to drive.
Q. So you did not know how to drive when you came to this country?
A. No, I never drove before.
Q. And how long were you in a driving school?
A. About two to three weeks.
Q. And explain the process of the driving school.
A. So I went there and then I said, well, I want to learn

how to drive. They asked me whether I drove before. I said I never drove before. They said, well, they have like I would say different amounts for -- if you choose like to pay $350 then you will have to stay for a month or so, and then you should have to pay higher and then they would maybe speed up the process or something like that. So they said, okay, we started learning and they gave me like a booklet that I read some of the rules and then I started driving around. So I was doing that from twice a week, about twice a week for like two to three weeks. And then at the end, the last week, there was another instructor, a different instructor than the one I had with me during the instruction. He came and then there was a test. So he had tested me whether I was good driving. So we drove around, not very far, just around, and then he said, okay, congratulations, and I was issued driver's license.

Q. So what year did you get to North Carolina?

A. It was in 2011. I believe it was February or March, 2011.

Q. Okay. And what did you do in North Carolina to support yourself?

A. I drove a taxi cab.

Q. And why did you decide to become a taxi cab driver?

A. So like I mentioned earlier, going to school, for me, is something that I had to figure out. I had to go to school. I love school and that's what I had been doing before I come here. So I realized that I needed a flexible job, and of course I had to ask around, some immigrants here going to college and then end up understanding that a cab driver could be a very convenient job for me.

Q. Why is that?

A. You could actually work part time or full time, flexible. And you could even go to school and then get off and then go to work. So that's why I chose to drive a cab.

Q. So how many hours would you say that you worked in a typical day?

A. I would say maybe 20 hours.

Q. In a week?

A. Oh, I'm sorry. That's for a week. Like 20 hours, that would be for a week, not for a day.

Q. So how many hours do you think you worked in a day?

A. I was not working every day. I was working part time. But I would say maybe three to four hours.

Q. Okay. So when did you decide to enroll in classes in North Carolina?

A. 2013. January, 2013.

Q. Okay. And did you do some research before you decided on the school?

A. Yeah, definitely I did.

Q. Okay. And could you explain what school you decided on and why?

A. Well, when I came -- when I came to the West, I found a different complex, a different educational system, different curriculums and different way of supporting students. In France and Algeria tuition is free. Free tuition here is not the case. Like what is called loans, I got Pell grants. And then I had to understand what loan is the money that the government would give you and you would give back later on after you graduate. And Pell grants is the money that the government would give you and you don't have to give it back. It's financial aid. And then I had to understand that Pell grants are granted only for undergraduate, not graduate. Like a graduate student cannot have Pell grant. He can have loan, but not Pell grant. So with all this in consideration -- I took all this in consideration to take my decision and also which is important for me, the market is different. I found here engineers they do very well like compared to teachers. Teaching has been maybe my initial idea, but after I saw teaching here, teachers they are, you know, compared to engineers, special engineers. So they have a modest salary. So that's why I took all this into consideration after doing research, and I have decided to go for engineering. And I chose Wake Technical Community College because I believe it is most common here that Wake Tech is cheaper than NC State. Community colleges in general I have to understand that too, that they are cheaper than the universities. So I have to go there. I was trying to save money as much as possible.

Q. Okay. And how long did you stay at Wake Tech Community College?

A. I went to Wake Tech from 2013 to 2015, about two years.

Q. And did you do well in your classes?

A. I did.

Q. And so after Wake Tech where did you go to school?

A. I transferred to NC State, North Carolina State University.

Q. And what did you study there?

A. Chemical engineering.

Q. And why did you decide on chemical engineering as opposed to electrical engineering or civil engineering?

A. So after I finish my first two years at Wake Tech, I had to decide which engineering branch I go to. Because of my grades I could actually do any engineering. That's why I went ahead and consulted with friends. So one of the friends is an engineer, so I told him and he did help me. He said here, especially in North Carolina, chemical engineers are doing pretty well. Because I did emphasize that I really want like an engineering field that would actually help me to find a job with a good salary. And he said chemical engineering would be a good option. And that's when I decided in 2015, my first semester at NC State.

Q. Do you have any brothers who are professionals?

A. Yes. All my brothers are professionals. My oldest brother who was born 1975, so maybe 41 years, he's a physician.

Q. Where is he a physician?

A. I'm sorry?

Q. What country is he a physician.

A. He's in Algeria.

Q. Okay.

A. So he's a doctor. And then other brother, he's a college professor. The one actually who is now currently in Italy completing and furthering his Ph.D., he's a college professor in Algeria. And then one is a banker. And then my baby brother is a computer science engineer.

Q. Okay. And your brother who is in Italy, had he ever been in the United States before?

A. Yes. He came here for like a month or so.

Q. Did he have a visitor visa? How did he come here?

A. My brother he did, because I was encouraging him to apply to go through the same process I did, to play lottery and try his chances. He actually has been trying his chances and then he won. He won the lottery and then he was assured diversity visa. And then he came to Raleigh for like a month or so.

Q. Okay. And did he continue with his permanent residence, or did he leave the United States.

A. No, he was not received his green card. Like I mentioned earlier he is a college professor. He had a contract with his college in Algeria. So after a month he had not received yet his green card, so he decided to go to honor his contract because he said I cannot just stay here waiting. He went back to Algeria to his position as a teacher.

Q. Did he ever return to the United States after he abandoned his green card?

A. No.

Q. So you were at the school and you were also driving taxis. Can you explain the process of how one becomes a taxi driver in North Carolina?

A. Yeah. So to become a taxi driver in North Carolina, there is an office here in Raleigh, a taxi inspection office. So everyone who wants to become a cab driver, you need to go there and then just say I want to drive. Then you would show your driver's license, valid driver's license. Then they would tell you -- they would give you the form to fill out and then you have to submit a drug test, you have to submit fingerprints. And then you have to submit your driver's license record, your driving record and then pay like about $150 and then -- and this process actually goes every year. Because the permit you will be issued will be valid only for one year. And then every year you have to renew your permit, and you have to go through the same process: drug, fingerprints and everything and pay the fees. And then also you have annually -- every year we have inspection, like inspecting the cars themselves, whether they are safe. It is a bit like a tedious process, but it does make sense because, you know, you will be driving people, and you are vetted. And sometimes you end up with driving people who are not actually conscious, especially on weekend and very often you've got people, female or male, they are completely out. So you have to drive them home safe. So that's why they make us go through all this.

Q. So when did you receive your first permit, what year?

A. It was 2011.

Q. And in 2011 did you receive any traffic tickets, any citation for infractions?

A. Yes, ma'am, I did.

Q. And you have received numerous traffic tickets; is that not correct?

A. That's right.

Q. And can you explain why you've received so many traffic tickets?
A. I believe there are two main reasons. First, for the traffic stop, like driving a cab is not like driving a car. You will be on the road a lot, and you will be exposed for traffic tickets more than regular car. And then the main reason is that I was not very familiar with driving. I had never driven in my life until I got to North Carolina. Yes, I got my driver's license in New York, but I never drove in New York. My first car was here in Raleigh and I was not familiar. And then I wanted a job to go to school, so obviously I had to go to cab driving, to drive a cab. And there is no such requirement in taxi inspection saying, oh, you need to be driving for such and such time. And they actually -- you just show your driver's license and then you can get a permit. So I believe that's why I got numerous traffic tickets.
Q. Okay. And did you ever hire a lawyer to handle your traffic tickets?
A. Yes, I did.
Q. And why would you hire a lawyer to handle your traffic tickets?
A. My first ticket, when I got my first ticket, was my first ticket in my life, like in 2011. So I didn't know what to do with it. And I asked other cab drivers and they

told me, you need to go see an attorney, pay him and then he will, himself, take care of it. So that's when I went to an attorney and then I paid him, and he took care of my first ticket.

Q. Okay. And do you remember when you received your last traffic ticket?

A. Back in 2014, I believe. I'm not sure of that. I think it is in 2014.

Q. So you drive taxis, you have to get a one year taxi permit. Would you please tell us about the renewal process? Do you have to go through DMV? What do you have to show to renew your taxi permit every year?

A. You need to go through the whole process every year. You have to provide your drug test and fingerprints and you have to pay $150. And you have to go to DMV. They issue a driving record and submit all this. And then you would actually give back your old permit, and then you will be issued a new permit with a new date of issuance and when it will expire, so the same process.

Q. Okay. So did you renew your permit in 2012?

A. Yeah, I did.

Q. And even with your traffic tickets you were allowed to renew your taxi permit?

A. That's right.

Q. And in 2013, did you renew it again?

A. Yes, ma'am.
Q. And you were allowed to renew with all your traffic tickets?
A. That's right.
Q. And in 2014?
A. That's right.
Q. Same thing, okay. Have you ever lost your taxi permit since 2001?
A. Taxi?
Q. Your taxi permit.
A. Not that I recall.
Q. Okay. So it has always been renewed?
A. Yes.
Q. Okay. So how long were you a permanent resident before you decided to apply for citizenship?
A. About five years.
Q. And why did you apply for citizenship?
A. Like I mentioned earlier, for me being an American has been a goal itself. I'm attracted to the United States. I wanted to become a United States citizen. And there is the right to vote that I could not do as a permanent resident, legal permanent resident. I could not vote, so for me it was good to be able to take part in the election process and to exercise my right to become a citizen.
Q. Did you use the services of a lawyer to apply for

citizenship?
A. No, ma'am.
Q. And why did you not?
A. For me, like getting a green card I went through the whole process on my own. I went through the whole process on my own. I could get my green card on my own. I thought I could get a U.S. citizenship on my own.
Q. Okay. And did you ask anyone to review your application before you filed it?
A. No, I did not.
Q. Did you ask anyone to help you complete it before you filed it?
A. No, ma'am.
Q. So let's start with the sequence of events that have taken place concerning your naturalization or citizenship test, but let's kind of take it in sequence.
So you had an interview in December of 2015 with a government agent that is in this room; is that correct?
A. That is correct.
Q. And that agent is Agent Tony Bell; is that correct?
A. Yes.
Q. And when did Agent Bell visit you with other officials?
A. I believe it was December 8th.
Q. Of what year?

A. 2015, last year.
Q. And where were you visited?
A. My apartment, my place.
Q. And at that time you were on crutches; is that correct?
A. Yes, I was injured playing soccer.
Q. And at that time were you asked about your naturalization application?
A. Yes, indeed. They informed me about the application.
Q. Okay. And what were you asked about the application?
A. Well, they said they were there to ask some questions about the application that I filled out.
Q. Okay. And do you remember if they spoke to you about question number 23 on the application?
A. Yes. So after Agent Bell came and two other agents came to my apartment, I welcomed them. I was on my crutches, so I could not really talk to them standing, so I had to use my couch. And then Agent Bell he came, he stood on my left and then the two other agents were just standing in front of us. And then Agent Bell told me about like they were not there to arrest me. I'm not like in custody. They were there to ask me questions about my applications. And then they did tell me also about the fact that I have right for an attorney. And one of the agents did specify that everything I would say could be held against me. And

then -- yeah, he did actually ask me about question number 23.

Q. And what was your response?

A. I gave the same response as I gave to the immigration officer and the same response I filled when I was first filling out the application.

Q. And what was your response?

A. No.

Q. And why did you think that no was the correct response?

A. For me when I read this question, as soon as I saw arrest and detention, it sounded very criminal to me. I felt it's something about crime, like being arrested or detained or put in jail, a prison for me. So I did not really hesitate to believe that it did not apply to me, and I checked no.

Q. Okay. And were you shown your traffic citations by Agent Bell?

A. Yes, ma'am. He did pull out the phone and on the screen he started scrolling his touch screen and then he said, do you see what this is? And I did take a quick look and then he took his phone back and then he tried -- he started listing different traffic tickets that I acknowledged, I believe except one, which was not traffic related. It was about like selling or buying alcohol. I said, no, that must not be me. I said it must be a mistake.

Q. Okay. And after he showed you the traffic record, did he ask you anything else?

A. Yeah, he asked me question number 23. And I said, no. He said, why? I said, because I didn't believe, didn't apply to me. I have never been detained or arrested in my life.

Q. Okay. And before Agent Bell came to visit you, did some other police officer try to contact you?

A. Back then I didn't know that it was a police officer from NC State, but after testimony of Agent Bell I understood that he was a NC State officer. I was contacted by an officer from NC State, so I did pick up the phone and then I answered and he said he was a NC State officer. Of course for me it was the first time I got a phone call from college. Wake Tech, NC State, every student is assigned an email, and everything, every single thing that coming from the U.S. -- I'm sorry -- from the college or university, the student, goes to this email. So when I got I was very skeptical about that. He says he wanted to talk to me; he's an officer, so I didn't feel comfortable. I thought was a scam or something. I said, well, I need an attorney if you want to talk to me. If you're an officer and you want to talk to me, I will be more than willing to talk to

you, but I need my attorney. And then he hung up.
Q. Okay. But after you received that call you did speak to government officials; you spoke to Agent Tony Bell.
A. That's correct.
Q. And an attorney was not present, correct?
A. I'm sorry, say again.
Q. So when you spoke to Agent Bell an attorney was not with you.
A. No, no, I didn't have an attorney when they were there, and they were asking about application.
Q. And you were cooperating with the government; you were polite?
A. Absolutely, absolutely. I was very willing and, like I said, I welcomed them, I answered all the questions they asked me about and, yeah.
Q. Okay. And so after the interview with Agent Bell were you arrested that day?
A. Not that day.
Q. And how many days afterwards were you arrested?
A. The interview was December 8th. And then they arrested me, I believe, two days later. It was like Friday.
Q. All right. So before the government agents came to visit you at your home, we had discussed before a Form 445, which is a Notice of Naturalization Oath Ceremony. It is

our Exhibit Number [1].

**MS. ARANEDA:** May I approach, Your Honor?

**THE COURT:** Yes.

Q. Have you seen this form before with your name on it?

A. No, ma'am.

Q. Okay. Would you please read the top line?

A. Of what page?

Q. At the very top of the form.

A. N-445, Notice of Naturalization Oath Ceremony, Department of Homeland Security.

Q. All right. And there is a section where it has Location and then below that it says, please bring the following with you. Will you please read the four items?

A. Yes. This notice with the reverse side completed. Please refer to instructions on the reverse side. Your permanent resident card (green card) between parentheses. All reentry permits or refugee travel documents you may have, valid or expired. Any other documents USCIS issued to you.

Q. Would you please turn to page 2? And would you please read question number 4?

A. Yes. Question Number 4 says, "Since your interview, have you been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance, including traffic violations?"

Q. If that question had been on the N-400 application, how would you have responded to that question?

**MR. GOULIAN:** Objection.

**THE COURT:** Overruled.

A. I would have said, yes.

Q. And why?

A. Because it is -- it is very clear, and I have the traffic, including traffic violations, and I know I have a bunch of them. I would have answered yes.

Q. All right. And if that had been the question on the N-400 application and when you were at your naturalization interview with the immigration official and she had asked you that question, how would you have responded?

A. Again, I would answer, yes, because here I see clear traffic violations, so I would answer yes.

Q. And why would you answer yes?

A. Because I do see traffic violations, and I know I have a bunch of traffic tickets, and the application itself, I stated that I am a cab driver for four years.

Q. Okay. And you had your naturalization interview at the Durham CIS office; is that correct?

A. Yes, ma'am.

Q. And do you remember the date or the month?

A. The last day of November.

Q. Okay. And do you remember the official who

interviewed you?
A. I know she was a female, but I don't remember her name.
Q. Okay. And did that person testify yesterday or today?
A. I haven't seen her.
Q. And did she read to you on that N-400 question number 23?
A. Yes, she did.
Q. And how did you respond?
A. I provided the same answer. I said, no.
Q. No. And why did you say no?
A. Because at that time I thought the question did not apply to me.
Q. Okay. I'm going to hand you what's been marked Government's Exhibit Number [1], which is the naturalization application.
**MS. ARANEDA:** If I may approach, Your Honor.
**THE COURT:** Okay.
Q. Does that look like your naturalization application that you completed?
A. Yes, ma'am.
Q. Please go to Page 20, Part 15.
A. I'm sorry, what part?
Q. Page 20, Part 15.
A. Yes.

Q. Okay. Please read the question.
A. Yes. I swear and certify under penalty of perjury under the laws of the United States of America that I know that the contents of this form, N-400, Application for Naturalization, subscribed by me, including corrections number 1 through 5 are true and correct. The evidence submitted by me number pages 1 through -- I believe it's 1 here. 1 through 5. I don't -- that's the number here I read. I think it is 1. Number Page 1 through or just blank -- is true and correct.
Q. Was that question read to you at your interview?
A. Yes, ma'am.
Q. And you signed that; that is your signature?
A. Yes, that is mine.
Q. And does that statement contain the word oath?
A. No, ma'am.
Q. Go to Page 18 of the application, Part 12.
A. Eighteen (18)?
Q. Yes, Page 18, Part 12.
A. Yes.
Q. Is that your signature?
A. Yes, that's mine.
Q. So there's a section that reads, Your Statement. Please read the statement.
A. I certify, under penalty of perjury under the laws of

the United States of America, that this application, and the evidence submitted with it, are all true and correct. I authorize the release of any information USCIS needs to determine my eligibility for naturalization.
Q. Okay. And is that your signature?
A. That's mine, yes.
Q. And what is the date that you signed it?
A. It's August 19, 2015.
Q. Okay. And did you sign that in front of the immigration official?
A. No, this signature -- that signature was when I just finished -- when I finished filling out the application before the interview, before even filing the application.
Q. Okay. So you did not sign that in front of any immigration official?
A. No, I was by myself when I signed that.
Q. And does that statement contain the word oath?
A. No, ma'am.
Q. When you filed and prepared yourself the N-400 and you also had your application interview, did you consider a traffic ticket as a criminal offense?
A. It never occurred to my mind that traffic ticket could be criminal offense.
Q. So you signed this form. The date is August 19, 2015; is that correct?

A. Yes.
Q. When did you first mail in the application?
A. I do remember that I file it twice. I don't remember exactly. I think it's -- it was in August, the first one. I don't remember the date, but it was in August. And then I got the mail returned to me.
Q. And why was it returned to you?
A. Because it was too early to file.
Q. What do you mean by too early?
A. You should file it like -- it was too early because it was not the time yet to file the form.
Q. So did you read the instructions to the application?
A. I did.
Q. Did you believe that you understood the instructions?
A. Yeah, when I read them I believed so.
Q. So were you surprised when it was returned the first time?
A. The first time?
Q. Were you surprised it was returned?
A. No.
Q. And why were you not surprised it was returned?
A. Are you saying -- your question is after I got my mail back? I'm sorry.
Q. That's all right. I'll start again. You mailed in the application the first time.

A. You are still on the first time?
Q. Yes.
A. Okay. The first time I mailed it and then I got it return back. And I didn't understand why I got it back, but I have an explanation saying that it was too early, I need to file it later -- later on time.
Q. So that means you did not understand the instructions correctly; is that right?
A. Right.
Q. And did you file it a second time?
A. I did.
Q. And was it returned the second time?
A. No.
Q. So let us -- my last questions -- let us return again to the naturalization application that landed you in court today. Question 23. Question 23 asks, have you ever been arrested, cited or detained by any law enforcement officer for any reason? When you saw the word cited, what did you think it meant?
A. I didn't know what it meant, what the word meant.
Q. So when you read it, when you saw it in between arrested and detained --
A. Right. So one of the -- the way I understood the question as a whole I thought it was like about crime that I was put in jail, arrested for. So -- even though I do

not understand the meaning of the cited, but the way I understood the question as a whole, I thought it didn't apply to me. I thought it was something about crime and criminal activity.
Q. And knowing what you know now, how would you answer that question?
A. Well, after I went all through all this process and my lawyers explained everything and hearing the testimony, I would have answered yes. Because like the expert this morning said, cited, traffic tickets are actually included in the word cited, so I would -- I would definitely answer yes.
Q. Thank you. No further questions.
**THE COURT:** Any cross?
**MR. GOULIAN:** Yes, Your Honor.

CROSS-EXAMINATION

**BY MR. GOULIAN:**
Q. So, Mr. Lefsih, you testified that it was your life-long dream to live in the United States; is that correct?
A. Yes.
Q. So when you won the lottery visa it was a big step toward realizing that dream?
A. That's correct.
Q. And you testified about why you didn't want to enter the U.S. on a student visa because coming to the United

States on the lottery visa gave you more benefits, an ability to work and to get student loans? That was part of it as well?

A. The green card, like I mentioned earlier, when you go on the website you will actually see a list of all those benefits. It's part of the advertisement of the website. You could live and you could work and you could become like a U.S. citizen, so it's attractive.

Q. So you just referred to becoming a U.S. citizen as part of the benefits of coming in on this lottery visa?

A. That's right.

Q. And that appealed to you; is that right?

A. Could you please --

Q. The possibility that you could become a U.S. citizen after meeting certain eligibility requirements, that was one of the benefits you found attractive?

A. Obviously -- obviously a green -- like permanent resident was a great opportunity for me, obviously becoming a U.S. citizen is even bigger.

Q. That was your goal from the outset, is ultimately you hoped to become a U.S. citizen after meeting eligibility requirements; is that right?

A. I wouldn't say it was my initial -- my initial purpose to become the United States, but the really initial things that attracted me is just being able to live and work and go to school as a U.S. citizen. That was very appealing to me. And then after I came and then I learned that I could become a U.S. citizen, I could vote and that became an ambition, indeed.

Q. And you wanted to become a U.S. citizen as soon as you were eligible; is that right?

A. Could you please repeat?

Q. Well, you knew there were certain eligibility requirements associated with becoming a U.S. citizen for someone who was a permanent resident?

A. I'm not sure I understand your question.

Q. Well, you knew you had to live here for five years?

A. Right.

Q. And you also knew that the application had to be submitted within 90 days of that five year period?

A. When I read the instruction I understood that I needed to file it like three months before, yes.

Q. So the date that you put on your application form was August 19, 2015, correct?

A. 2015?

Q. I'm sorry -- yes, that's the date that you put on your application?

A. Yes, that's the first date, right.

Q. And that date was exactly three months before the five year anniversary of when you first entered the United

States, correct?
A. So what -- I'm just -- I want to remember the date on my entry?
Q. Well, turning to Defendant's Exhibit [4] Ms. Araneda was asking you about, that's your visa application, correct?
A. Exhibit Number [4]?
Q. Yes. Defendant's Exhibit Number [4].
A. Yes. Application for Immigrant Visa and Alien Registration.
Q. And you see a stamp in the upper left corner?
A. November 19th.
Q. And that stamp is November 19, 2010, right?
A. Yes.
Q. And that's the date when you were physically admitted into the United States?
A. Yes, yes.
Q. And that was in New York?
A. It was New York.
Q. So that was November 19, 2010 and so the five years from that would be November 19, 2015, right?
A. Right.
Q. That's when you hit your five years?
A. Right.
Q. So the earliest that you could apply is 90 days (three

months) prior to November 19, 2015?
A. Right.
Q. And so three months prior to November 19 would be August 19?
A. Right.
Q. And that's why you put that date on your application form, correct?
A. Uh-huh.
Q. But that's not the date you actually signed it, is it?
A. I signed my form as soon as I finished filling it out.
Q. And so your testimony today is that that's the date you actually signed the form, August 19, 2015?
A. I believe so.
Q. So you testified previously about receiving a notice from the immigration service that you had submitted it too soon, correct?
A. Yes, it was returned to me.
Q. It was returned to you?
A. Yes.
Q. With an explanation as to why it was being returned to you?
A. I think there was an explanation.
Q. Well, if you could turn to Government's Exhibit [3] in the notebook. So this is a notice that came back to you with the returned application; isn't that correct?

A. That's what it says, yeah.
Q. And the notice informed you that -- and this is towards the bottom of the text -- the information provided with your application indicates you have filed your application more than 90 days before meeting the continuous residence requirement for the category selected.
A. I'm sorry, where are you reading, which paragraph?
Q. The text beginning, "The information".
A. The information provided with your application?
Q. Yes.
A. Indicates you have filed your application more than 90 days before meeting the continuous residence requirement for the category selected.
Q. And in the upper portion of this document there is a received date indicating when the agency received your application, correct?
A. Yes.
Q. And what is indicated on that?
A. It's August 18, 2015.
Q. And that was the day before you had dated your application. You had dated your application August 19, 2015, didn't you?
A. That's right.
Q. So you had sent it in prior to the date that you had put on -- you had signed it prior to the date that you put

on the application?
A. I might have put the wrong date, yes, indeed.
Q. And the reason was because you wanted to become a citizen as quickly as possible; you wanted to get your application in at the first possible date when you could start being considered?
A. That was not my intention.
Q. Are you saying that it is a coincidence that the date you put on the form is exactly three months before the five year anniversary of your entrance into the United States?
A. I believe I did a mistake. It was not my intention to get my citizenship as soon as possible. It was not that my intention.
Q. So it's just a coincidence then that you happened to date the application exactly three months before the five year -- your five year anniversary in the United States?
A. I believe so.
Q. Now you testified that you did read the questions on the form before answering them, correct?
A. I did.
Q. And read the associated instructions?
A. I did.
Q. And you testified that you got excellent grades at Wake Tech, did you not?
A. Yes.

Q. And in fact by the time you submitted this application you had transferred to NC State; is that right?
A. Yes.
Q. And your -- Government's Exhibit [22] has your grades from Wake Tech.
A. Yes.
Q. And you got almost all A's; isn't that right?
A. On the English test?
Q. No, I'm referring to the courses you took at Wake Tech?
A. Yes, yes.
Q. A's and B's, but mostly A's; is that right?
A. Yes, that's right.
Q. And not just in science courses. You took American History, American Literature, American Government and got A's and B's in those courses as well; is that right?
A. Yes.
Q. And to get these grades you had to do well on tests and examinations? Isn't that correct?
A. Yes, sir.
Q. And so it's fair to say that you're a good test taker; is that right?
A. I work hard on the material we are given. We have specific material. I work hard, really hard. I'm a very hard working student on specified material I am given and

then, that's -- yeah, I get good grades because I work hard.
Q. And you prepare for these tests? That's part of working hard is preparing for the tests.
A. Reviewing the material you are given in the college schools.
Q. And then when it comes time to actually taking the test you have to have attention to detail, don't you?
A. I'm not sure I understand.
Q. On these tests you're being asked questions, right?
A. Of course.
Q. And you have to answer the questions correctly, right?
A. Of course.
Q. In order to answer the questions correctly, you have to understand what the questions ask, correct?
A. Of course.
Q. So to do well you have to read the question closely and understand what is being asked in order to give a correct answer?
A. Correct.
Q. And you're good at doing that, aren't you?
A. I'm good at getting good grades, yeah.
Q. So the N-400 is kind of like taking a test, isn't it?
A. It is not a test but --
Q. But a form like that involves a series of questions --

A. A series of questions.
Q. -- that you have to answer correctly, right? And, in fact, there's a lot more at stake in this N-400 application than a test for a college course, isn't there?
A. I don't agree.
Q. You don't agree?
A. Yeah, because on college when I work, my material, I have material and they work and they review the material and then I go do my test and I get good grades. When I filing the application, for me it was just like the application I did for my green card, you know. I was -- I was -- now, right now, yeah, I admit that I should have, you know, paid more attention. But at that point, at that moment when I was filing, like filing the application 400, I thought I could do it. I thought I was so smart to do it to be able -- I was able to get my green card on my own. I thought I was -- I could do -- do my citizenship as well. That was the --
Q. Mr. Lefsih, my question was simply that applying for naturalization is a much more significant and important act than taking a test for a college course. Would you not agree with that?
A. I agree,
Q. I mean, in fact, when you're applying you're applying to become a United States citizen?

A. Yes.
Q. And you have to answer these questions, under oath, correct?
A. Yes, I did understand that I was filing to get in United States, which is a very serious thing, yes.
Q. And you were answering these questions under penalty of perjury, correct?
A. That's right.
Q. Which you're not doing that when you take a test?
A. No.
Q. So, if anything, there was -- you had more of an incentive to review the instructions to make sure that you answered these questions correctly on a naturalization application?
A. Right.
Q. Now, you said that you did not answer yes to question number 23, have you ever been arrested, cited or detained by any law enforcement officer for any reason because you had never been detained or arrested?
A. That's right.
Q. But of course the question asks have you ever been arrested, cited or detained, correct? That's the wording of the question; isn't that right?
A. The wording, yes.
Q. And the word, or -- you understand what the word or

means, right?
A. There are two contexts. Now, yes, definitely after I went all through all this process I realize that, yeah, the word cited and/or detained but when I first read this question it looked very criminal to me. And so arrest and detention, I thought it was something I was arrested for. So that's the way I understood the question as a whole.
Q. So you were concerned that if you answered yes it might make it look like you were a criminal?
A. When I answered this question and I put, no, I had no concern. I was sure that my question was correct. I was completely sure that the question did not apply to me.
Q. But if you had answered, yes, you didn't know what impact that could have on the application, did you?
A. Could you please repeat the question?
Q. If you had given a yes answer to that question, you didn't know what effect that would have on how your application was processed, did you?
A. I just answered no because I thought it was correct. I didn't even think about like that would be the -- what would be the consequence of answering yes.
Q. Well, you were concerned, were you not, that one consequence of answering yes, that it could slow down, if nothing else, slow down the process?
A. Like I said, I have no concern at all. When I file my

application, I was sure, perfectly sure, that it didn't apply to me, so I answered no. I thought my answer was perfect. I thought it was correct, so.
Q. So, Mr. Lefsih, you're testifying under oath right now, are you not?
A. Yes, sir.
Q. So you're answering questions being put to you under oath just like you were answering questions on the form at the naturalization interview, correct, in the sense that you are under oath?
A. Well, it's not really the same environment.
Q. Yeah, it's not the same environment, but you have an obligation to tell the truth. You had an obligation to tell the truth in response to the questions on the form, and at the interview, and now sitting in court?
A. Absolutely. When I was filing the application and when I was answering the immigration officer and answering the questions of the agent, I was truthful, and I believed my questions all were correct.
Q. And at the time you answered the questions on the form and at the interview you were afraid that answering yes about your citations would slow the process down. You wanted to get citizenship as quickly as possible.
A. That's not correct. Like I said, I had no concerns at all. For me my answer was correct. For me it was just

correct. I had provided my driver's license and traffic record every year for inspection. I would have no problem disclosing them for to get my U.S. citizenship. It's just the way I understood the question I thought it was something I was arrested for or put in jail or prison. It looked very criminal to me. So I did not hesitate to check no. And I believed my answer was correct.
Q. And sitting here now, well, there's more at stake than just a naturalization application. Now you face the prospect of being found guilty of criminal charges, you understand that?
A. Yes.
Q. And so there is even more at stake now riding on your testimony; isn't that right?
A. Yes.
Q. Because that could affect your chances of ever becoming a citizen, correct?
A. Yes, sir.
Q. Beyond that it could result in you having to go back to Algeria, and you don't want to go back to Algeria, do you?
A. I don't.
**MR. GOULIAN:** No further questions.
**THE COURT:** Any redirect?
**MS. ARANEDA:** Yes.

REDIRECT EXAMINATION

**BY MS. ARANEDA:**

Q. Mr. Lefsih, when you signed the N-400 at your home, and I'm talking about Page 18.

A. Of what exhibit?

Q. This is Exhibit Number [1]. This is the naturalization application. It's labeled as Government's Exhibit Number [1].

A. Okay. What page?

Q. Page 18.

A. Yes.

Q. That question does not use the word oath; is that correct?

A. No.

Q. And going back to the form N-445, that is the question concerning the oath ceremony, question number 4 reads: "Since your interview, have you been arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance, including traffic violations?" If that question had been on the N-400, how would you have answered?

A. I would have answered without hesitation, yes.

Q. And why is that?

A. Because there's like -- it is very specified and I got traffic violations that I know that I have bunch of traffic violations that I would have answered yes, and I would have no problem disclosing all my criminal record.

Q. And you also every year you have renewed your taxi permit. You had to disclose your entire traffic citation history.

A. Every single year, yes.

Q. And you disclosed it?

A. Every time.

Q. And you have never been denied your taxi permit because of your citations, correct?

A. Never.

**MS. ARANEDA:** Nothing further.

**THE COURT:** All right. Thank you. You can step down.

**THE COURT:** Any other witnesses?

**MS. ARANEDA:** No, Your Honor.

**THE COURT:** Are there any rebuttal witnesses?

**MR. GOULIAN:** No, Your Honor.

**THE COURT:** Let me have the jury go to the jury room.

(Jury out 3:23 p.m.)

**THE COURT:** Do you want to renew your motion?

RULE 29 MOTION AFTER ALL EVIDENCE

**MS. ARANEDA:** I do, Your Honor. I wish to renew my Motion for Judgment of Acquittal based on the previous arguments concerning that the government for all four counts has failed to show that my client acted knowingly on all four counts, and they also failed to show that he signed his application, N-400, under oath, under both 1015(a) and 1546(a).

**THE COURT:** All right. I'll deny that.

CHARGE CONFERENCE

Government's Number 20, Count 1 and 3, that the statement has to be false, that it has to be under oath, the defendant had to make a knowing statement that it was false at the time he made it and that the statement was made in a proceeding relating to naturalization.

**MR. GOULIAN:** Yes, Your Honor. And, actually, I have prepared a proposed amended instruction for number 20. The defense has raised this issue of the oath, and I would like to incorporate the instruction used in the First Circuit case.

**THE COURT:** All right. Hand that up. Hand that up. And that's modified on what was 20, okay.

**MR. GOULIAN:** This adds the last sentence, the statement was made under oath; that's been added.

**THE COURT:** All right. And then Counts 2 and 4, the defendant, first that he made a false statement, that the statement was made oath or penalty of perjury, that the defendant had made a knowingly false statement at the time he made it, that the statement was material to the activities of the agency, and the statement was made in an application required by immigration laws. Those are the charges I'll give.

**MR. GOULIAN:** Your Honor, I just mislabeled those elements. There's two separate sheets. You know, 1 through 5 is 1 through 4.

**THE COURT:** Yeah, I got it. We'll take a recess and then you can do your arguments.

(Court recess 3:28 p.m. - 3:45 p.m.)

**THE COURT:** You remember yesterday afternoon I gave you a short outline of the trial, the opening statements and then the evidence, and you've heard all that. And now, if you'll remember what I said -- and you may not -- but I said that the lawyers will come in front of you and make their closing arguments, and that's the point that we're at now. So you've heard all the evidence in the trial. You've heard the testimony and the evidence. And the government goes first because it has the burden of proof and so the United States Attorney will make his closing summation. And then counsel for the defendant, Ms. Araneda, has her closing argument, and then the government can have rebuttal to answer anything. And then I'll give you instructions. That's what we have left. The jury will be with the government.

CLOSING ARGUMENT BY MR. GOULIAN

Good afternoon, ladies and gentlemen. I just want to begin by thanking you for your time and your attention as jurors in this case. I know that even a relatively short trial like this one can still be a significant burden being away from work and other responsibilities, but your service is important to everyone involved.

Now I would like to begin with Government's Exhibit [22], which is the -- Mr. Lefsih's grades at Wake Tech. That's not an issue in this case but I think it lays kind of some of the important context here for what we're talking about. He got stellar grades at Wake Tech. He in the courses -- not just in science and engineering courses, but in humanities courses that required a high level of working knowledge of the English language. He tested out of multiple lower level reading and writing courses, and he got very high grades. And that is significant for several reasons here. First, most obviously it shows that his English skills are excellent, that he understands the English language very well. And it shows his attention to detail, because you don't get good grades without having attention to detail, without reading questions closely and carefully and understanding every word. Because it's very easy -- everyone who has taken a test, everyone knows how easy it is to get tripped up if you get one word wrong in a question. That's true not just in English questions, you know, involving history and English, but in science and math as well. You get one step wrong, then everything comes out incorrectly. And it also shows that he is a good test taker. He is very -- because ultimately that's how you get good grades, you're good at taking tests. And this, what we're calling the N-400, Government's Exhibit [1], the Application For Naturalization, that was, in essence, a test. And in part it was testing the honesty, which he failed. He failed as to the question at issue here, question 23 on page 15. You're going to have the exhibits when you go back to deliberate, so you'll be able to review them on your own. But I'm going to read it to you one more time. "Have you ever" -- and the word ever is in bold -- "Have you ever been arrested, cited, or detained by any law enforcement officer (including any and all immigration officials or the U.S. Armed Forces) for any reason?" That is a very broad question, and he answered it falsely. I don't think there's any dispute at this point that he answered that falsely. And the question -- there are a couple of questions going to his knowledge. First of all, whether he knew about the citations at the time he was answering this -- filling out this form and at the interview. Now this was not a traffic ticket, one or two traffic tickets he had gotten ten years, a long time in the past. He had received 11 in the past several years resulting in him paying over a thousand dollars fines and fees. The citations charged him with 15 offenses, six of which he pled guilty to. Now there was some question about which of these -- if some of these were infractions versus being treated as criminal cases. And in fact most of them are infractions, but some of them were not. Some of them were criminal, which means they were misdemeanors. The form, the citation form -- and it uses the word citation at the top -- it puts the defendant on notice that you have been charged with a misdemeanor or infraction specified below. So it's not an infraction, it's a misdemeanor. It's a criminal matter. But regardless of whether it's an infraction or a misdemeanor, the question was, have you ever been cited. So the answer is, yes, regardless of whether it's an infraction or a misdemeanor.

Another thing to keep in mind is that this related to his life at the time as a taxi driver. So this made these citations important to him. They required his attention, his ongoing attention to deal with. It wasn't as if he just, you know, wrote a check and was done with it. It involved showing up for court, hiring attorneys, which increased the expenses. The thousand dollars was just the fines and fees. He retained attorneys, I believe, on six other -- in connection with six other, a total of six occasions. So that would significantly increase the cost to him and required his attention. And it's also worth noting that the traffic citations contain a small little narrative from the officers describing what happened. And two of them note, according to Exhibit Number [10], it says, This taxi cab driver lost control of the vehicle, went off the road, struck a City of Raleigh red light sign, then took out the red light camera box at the intersection of Dawson Street and Lenoir Street. So this was a significant accident in connection with that citation. It's not something that he would forget about. It's something that he would remember and know the consequences that went with it.

The other one worth mentioning -- this is Government's Exhibit [17] -- the narrative is -- it refers to an orange taxi in number 1 lane of 2, pulling ahead of vehicles. Estimated at 75, locked at 75. And then, did not speak English. So this was a citation issued on August 26th, 2012, and that was after he had taken his English proficiency exam at Wake Tech and tested out of the reading courses. And even in his original visa application to the United States he listed English as one of his languages in addition to French and Arabic. And I note that simply because for the officer to believe he didn't speak English, it was simply because he didn't want the officer to know he spoke English. And that's significant, because that tells me that if he doesn't want to disclose something to a government official, he's not going to do it.  He didn't want, for whatever reason, the officer to know he spoke English, and he didn't want the Citizen Immigration Services to know that he had these traffic citations.  And before I get into the question of why this is the case, I just want to focus on his knowledge that the question on the form was referring to citations and that he knew that. First of all is the plain language of the form, which I've already read to you: arrested, cited or detained.  And additionally on the form there are boxes that if you answered yes to that question or several other questions pertaining to criminal history, then it asks you to provide information.  And that -- and those boxes, again, ask about why you were arrested, cited, or detained, the date, where it happened, and then the outcome or disposition.  So he was going to have to fill out that information.  And if he had -- if he had answered yes, a yes answer you can see he put no's one after the other, no, no, no, no, no.  But yes is going to get the attention of the agency that is reviewing these applications.  And he doesn't know what effect that's going to have.  He doesn't know how that's going to affect the application or whether it's going to slow it down.  But it's reasonable to assume that it would slow it down to some extent, that they might come back and ask for more information.  And this goes to his motive, because it's a fair question, well, why did you lie? Why would you lie about this? Why would you lie about traffic citations? And the reason is because he wanted to become a citizen as quickly as possible. You heard testimony that he -- someone who entered the United States on the type of visa that he had could become eligible five years of when he entered the United States. He entered in November of 2010, so that five years was going to be November 19, 2015. November 19, 2010 is the date of admission that's on Government's Exhibit [6], in the upper left corner, November 19, 2010. So the five years runs in November 2015. They would only consider the application if it's submitted within 90 days of that five year point. Now he filled out the application and he put the date of August 19, 2015, which is exactly three months (that is 90 days) prior to the five year anniversary of his entering the U.S. Now that was not, in fact, the date that he signed it. And the reason we know that is because it was received by the agency on August 18th, the day before the date that he put on it. And there's August 18 on the very first page, and it's crossed out and it's initialed. Because they took the form, they sent it right back to him because he wasn't within that 90 day period. So he gets the form back with Government's Exhibit [3], which is the notice explaining why it's being sent back. Government's Exhibit [3] has the date they received it, again, showing August 18th, the day before the date he put on there. So he has -- and the point of this is -- that's -- he basically post-dated his application. He put the earliest possible date that they would consider and then he mailed it in even before then. And the significance of this, again, is that he's going to mess with the form to accomplish his goal if it suits him. His goal, obviously, is to become a citizen. But beyond that it shows that he wants to become a citizen as quickly as possible, at the earliest possible opportunity. And so when it comes to that question about arrested, cited, or detained, he doesn't want to answer yes to that question because that's going to slow down the process or he would have reason to believe that that's going to slow down the process. He didn't want it on the form; he didn't want to say so at the interview. Ladies and gentlemen, that is why he didn't put the information on there.

Now he testified that it was his life long dream to come to the United States. And at some point after he came here it was his dream to become a citizen. He wanted this very badly. That goes to his motive here. Now there was some evidence about why the agency asked for this information. Mr. Freitas with the Citizen Immigration Service Office explained that the reason they asked this information to make a determination of good moral character. That's the statute that governs what they do. They have to decide whether the person who wants to become a citizen is of good moral character. Congress requires them to do that before they can grant citizenship. Now, let me just say one thing. it is -- whether Mr. Lefsih has good moral character is not an issue in this case, okay. That's not for you to decide. That's not going to be in the instructions that the Judge gives you. That's something that the agency has to decide when they consider these applications. But that's why they asked for this information. And even though on its face traffic citations don't seem like the kind of thing that would be relevant to good moral character, but Mr. Freitas from the Citizen Immigration Service Agency explained how it is potentially relevant. Because it can reveal failure to appear for court, unpaid fines. It can reveal drunk driving, other information that is potentially of significance to that determination. And it's not information -- that type of information does not show up when they run their background checks. You heard testimony that that is part of the process. After they get the application before the interview, they run a name check and a fingerprint check through the FBI criminal data base. But that's only going to capture fines that are reported to that data base, and that does not include the type of information that is at issue here. So what that means is that the agency -- is that the process depends upon the honesty and the forthcomingness of the applicant, because the agency is dealing with numerous applications, and they have a limited ability to verify the information that is in these applications. And so it is incumbent upon the applicant to be forthcoming about every aspect -- everything that's being asked. And, again, this is -- it's important to remember what we're talking about here. We're not talking about a job application. We're not talking about an application to a university where it's possible these type of questions might be asked. This is an application to become a citizen of the United States, signed under oath, under penalty of perjury. And so that is something that is incumbent upon the applicant, and he had an interest in making sure that he answered it accurately. But he didn't want to answer the one question we're talking about accurately, because, again, it would slow down the process, and he wanted to become a citizen as quickly as possible. That was his goal here.

And the other thing to point out is Mr. Lefsih's bad driving is obviously not the issue here. That's not what's a concern. Again, it's the failure to disclose the citations that would enable the agency to take additional action in inquiring into what was going on, into his background.

Now the Judge will be instructing you about what materiality means. This goes to the issue of whether the false statements were material. And that issue pertains to two of the counts at issue in this case. There are four counts. The first two counts deal with this false statement in the application. That's Counts 1 and 2. Counts 3 and 4 relate to the false statement made at the interview. It's Counts 2 and 4 that involve an element of materiality. That's some of the elements, and you're going to have to find that that false statement was material. And you will be instructed that for a false statement to be material it has to be capable of influencing agency action, not that it did, not that a false statement in this particular case made the difference between whether they would grant it or deny it, simply whether it was capable of influencing agency action. And Mr. Freitas testified to the effect that, yes, it is capable of influencing agency action for the reasons I've already explained, that there are other areas, related areas, that you would inquire into. Now materiality is not involved in Counts 1 and 2. The other -- I'm sorry, 1 and 3. The elements of that statement is false, and I don't think there is any dispute about that, that the false statement was made under oath. And you will be instructed that under oath means either pursuant to an oral swearing or a written statement made under penalty of perjury. And he signed this form under penalty of perjury. He did so twice, before he submitted it and then at the time of the interview. And then the remaining element, and this is true as to all four counts, is that he did make a false statement knowingly, that he knew the statement was false at the time he made it. And that's going to be the main issue for you to decide. And I would remind you again that he was -- not just that his English is good. He is a very smart, articulate person, highly educated. And I would remind you of what happened when Agent Bell was interviewing him in early December of last year when Agent Bell confronted Mr. Lefsih with the traffic citations. And his response was that it didn't apply to him because he hadn't been arrested or detained. And I think he said something similar again today. And I would submit to you that that makes no sense, because the word or is in the question, arrested, cited, or detained. And I would submit to you that if this were an honest mistake, if this were simply an honest mistake, but when a law enforcement officer comes to your door and confronts you about this and shows you the -- and he reminds you of the citations, which he admitted the citations. He knew that he had them. And asks you, well, why did you not answer yes to this question. Now if this were an honest mistake, the response would be, gosh, you know, I made a mistake. I just didn't understand the question. I should have said yes. But that's -- that's not -- that was not his response. He dug in his heels. And I would submit to you that he, on the spot, had to make up an excuse as to why he didn't report it. And the excuse was, because I wasn't arrested or detained; so, therefore, the question didn't apply to me. Yet that makes absolutely no sense. And, again, this is coming from someone who is highly educated, who is extremely proficient in the English language and, again, it's a matter of just basic logic. It says, arrested, cited, or detained. And he's there saying, well, I wasn't arrested or detained; so, therefore, I wasn't cited. That makes no sense. But he had to come up with an explanation on the spot and then he had to stick with that explanation today because if he changed it, if he tried to come up with some other explanation, then the obvious question would be, well, why didn't you say that to Agent Bell at the time.

So, ladies and gentlemen, I would just go back to my original point, that this N-400 is a test of -- it is in a very real sense a test of one's honesty. Because the process requires -- it depends to a large degree on the honesty of the applicant, because there is a very limited ability to verify the information that they are providing.

And the evidence in this case establishes beyond a reasonable doubt that Mr. Lefsih knowingly lied when he answered no to question number 23 on the written form and when he answered no again during the naturalization interview, both times under oath. And I would submit to you then that he is guilty as charged. Thank you.

**THE COURT:** All right. Thank you. Ms. Araneda, you have the jury with closing argument.

**MS. ARANEDA:** Yes. Thank you, Your Honor.

CLOSING ARGUMENT BY MS. ARANEDA

Good afternoon, and I thank you for your attention and your service. It's very important what you are doing. So as you know we're making our closing statements. And, as the government pointed out in his opening statement, the first before you today is about citizenship. It's about the process and an untrue statement that was made by Mr. Lefsih. The statement was made both on the N-400 application and at the interview. One of the elements, however, is that the false statement was made on purpose, meaning that Mr. Lefsih made this knowingly and not because of ignorance or mistake. Let's briefly go over some of the evidence that was presented by the government. We had Agent Tony Bell. He was the gentleman who works for Department of Homeland Security Investigations. He directly asked Mr. Lefsih, why did you respond to question

23 with a no? Mr. Lefsih's answer is, the question did not apply to him because he had not been detained by law enforcement. You have heard three different versions throughout this trial of how that question can be worded. Two of them are very, very clear. The third one on the N-400 is unclear. And I know the government is claiming that they did that on purpose to test a person's honesty, but if that were true why would the form, the one that has the Notice of the Oath Ceremony, why would that form on it specifically include traffic violations? So that is not the reason of that form. If that were the reason for the question on the N-400, it would be the same question on the Notice of Oath Ceremony, and it's not. It's a completely different question. And the question on the Notice of Oath Ceremony goes into much more detail of what is included. So the N-400 question, number 23, is very vague. The other applications. the one for permanent residence, the Application of Notice of Oath Ceremony, those questions are very specific, and they go into great detail.

When Mr. Lefsih was being interviewed by Tony Bell, he testified -- or Mr. Bell testified that Mr. Lefsih said he didn't feel that he had been detained when he had been pulled over by the police. One thing the government didn't do was to call a Raleigh police officer to testify and to question a police officer about whether when someone is pulled over by a police officer, if they are being detained. Again, at the N-400 interview, a naturalization interview, when my client was asked about question 23, he responded in accordance with his belief there was no conflicting testimony as to his response. Imagine you file an application, you have an investigator, you have several FBI agents who come to your house. He responded in the exact same way as he did on his application. And he responded in the same way because that is what he truly believed. Now we know he was mistaken, but in his mind he was correct. The FBI checks, there were two. One was for fingerprints and the other one was for the name check. Nothing came back. He was cleared for citizenship, he was approved for citizenship and later he was unapproved and then finally his application was denied. Agent Bell discussed at great length the visa diversity system and the paperwork that is involved to get a green card. There is absolutely nothing irregular in the paperwork that Mr. Lefsih completed, and he has not been accused of making any false statement on that paperwork. Agent Bell also discussed at great length why or how he could not understand why Mr. Lefsih preferred to come to this country with a green card instead of a student visa. Well, as the testimony came out, you have learned that people with student visas cannot work unless they get specific permission. They can't automatically transfer to another school. They also cannot stop going to classes or become part-time students, so Mr. Lefsih could not have both worked and been a part-time student as he was doing. And in general one cannot show an intent to immigrate. And as Agent Bell testified, people with green cards have all the benefits and privileges of citizenship except for the right to vote. Agent Bell also testified and discussed at great length about how he couldn't understand why Mr. Lefsih left a master's program in France and came to the U.S. with a green card. Well, you have learned that Mr. Lefsih was not a permanent resident or a citizen of France. He was in France on a student visa. And Mr. Lefsih also always dreamed of coming to this country. He had an opportunity and he came. That's not hard to understand. Agent Bell also discussed that he couldn't understand why a person in the French master's program would want to be in a community college in the United States. Well, Mr. Lefsih explained all that. His education credentials are different than ones normally expected in this country. He understood he was going to have a very hard time with his credentials becoming a professional. It is also cheaper and less expensive to go to a community college. And I know a lot of you have traveled, and can you imagine if you were moving to a foreign country and even though Mr. Lefsih is intelligent, he speaks several languages, it's never like your native language. And to be able to work and to hear terminology, a certain type of English that you are not used to hearing, I cannot imagine doing that. And so for him instead of jumping into a graduate level program, which he also discussed that he would not be able to get into the programs, it made perfect sense for him to go to the community college and to start there where he could test out the system. Because in Europe and North Africa the educational system is very different from our system. And there is nothing unusual about a person doing what Mr. Lefsih did.

So let us return to why we are all here today. You need to decide if the government has proven beyond a reasonable doubt that Mr. Lefsih, on purpose, hid his traffic tickets from the immigration service. Mr. Lefsih, you've heard from Officer Freitas, filed his N-400 before the time period that he was permitted to do. Well, that was a mistake, so by virtue of the fact that he filed his application before he could proves that he doesn't completely understand, as smart as he is, everything in English. And it proves that he misunderstood the filing instructions, and he also misunderstood question 23 on the naturalization application. He made a mistake. He made twice a mistake on the application, actually three times, with the date. That was a preprinted date. So remember on the oath ceremony -- that is the form that you will be taking into the jury room -- it asks very specifically, have you been cited, fined -- it goes through a whole list, a whole litany of different ways a person could receive a traffic violation, and it specifically states it includes traffic violations. So the government comment that the N-400 is testing the honesty of a person by on purpose not including traffic violations doesn't hold true because then the second form that one gets before you're sworn in would not specifically list all these different things and would not say, including traffic violations. If it were truly the intent to test honesty, the two questions would be exactly the same. Now you may ask, well, why are the questions different? Well, the questions are different because forms are created by immigration at different times, and when you get the forms you will see that the forms in the bottom left-hand corner have different dates. And today the applications have actual expiration dates. So we don't have any evidence that it's the same person who is renewing the applications for the government or republishing them. So that is the reason though that the two different applications have different questions. It's because they're not coordinated together.

And then also going back to the question, which is question 4 on the exhibit that you will have, the Notice of the Oath Ceremony, I asked Mr. Lefsih, if that had been the question, which specifically includes traffic violations, how would you answer it, he said, well, there's no question about it. I would have disclosed my traffic violations. The N-400 question which, again, you will see number 23, as I have said, once again asks have you ever been arrested, cited, or detained. Nothing about traffic violations. And it's obvious that Mr. Lefsih with all his numerous traffic citations apparently doesn't understand everything in English as perfectly as the government would want you to believe because he kept getting traffic tickets. If he understood everything perfectly and he was so perfect, as the government said, after his first ticket he would have sat down and read all the rules and would have never gotten another ticket. If he is as perfect as the government wants you to believe, how could he not have understood the instructions on the N-400 and mailed it in too early. His citations, his early mailing in of the application shows he makes mistakes. He doesn't fully understand English. And the government also discussed what a great test taker he is. That is true. But the N-400, in his mind, it wasn't taking a test. He has always handled his own immigration matters. It would have been different if he had used a lawyer to begin with when he started this whole process.

And he testified that he looked at the questions. It looked simple. But as we all know, he was wrong. He made a mistake. He mailed in his application too early, and he answered question 23 wrong.

So, in conclusion, the government's evidence in this trial does not prove beyond a reasonable doubt that Mr. Lefsih purposely answered no to question 23. He has consistently stated his reasons, although he is wrong, as to why he didn't list or state his traffic violations on the N-400. He didn't act knowingly. He was acting out of mistake or ignorance that he was required to list the traffic tickets or to tell the immigration officials about his traffic tickets. So you are going to have your jury instructions, and you're going to have to decide on these four counts. Keep in mind that these four counts relate to the same conduct, the conduct being whether Mr. Lefsih, on purpose, did not list his traffic citations and whether, on purpose, when he was asked about his question 23 about whether he had ever been arrested, cited, or detained his answer, no, was also on purpose. And we submit to you, and the evidence shows it was not on purpose. He was acting out of a mistake and ignorance of what was the true meaning of that question. And Mr. Lefsih also has testified that every year he had to renew his taxi permit. And every year he got a renewal. He was never stopped from getting his taxi permit. If he had not been able to in one year, well, that definitely would be a clue that something was wrong, and he should be aware this his traffic citations were something more than just traffic tickets. But that never happened. So how could he know that traffic citations, traffic violations, traffic tickets, were covered by arrested, cited, or detained, especially when the question never said, including traffic violations.

So without the government proving he knowingly lied, beyond a reasonable doubt, you must find Mr. Lefsih not guilty of all four counts. Thank you.

**THE COURT:** All right. Thank you. The jury can now be with the government for rebuttal.

REBUTTAL BY MR. GOULIAN

Ladies, and gentlemen, I just want to briefly respond to a few main points that the defense is making here. First of all, the form Ms. Araneda was referring to that specified, including traffic citations, that's not the form we're talking about. That's a notice form that went to him after the interview, after he made these false statements. The wording on the form is, on it's face, extremely board for any reason, arrested, cited, or detained, for any reason. So it doesn't need to say, including traffic citations, because it says, for any reason. That would include traffic citations on its face. The point was made that the government did not call a Raleigh police officer to explain what detained meant, whether Mr. Lefsih was detained during these traffic stops. Of course he was detained. When the blue lights come on, you have to pull over, and you're being detained while he is writing the ticket. So, again, let's just -- these words are not complicated that are used in this form, and this form, remember, is not for people who had his level -- just for people who have his level of educational background and knowledge of English. This is for people who can pass this -- this English writing test, writing California has the most people, or reading a statement, what state has the most people. This form is for people who can just meet that level of proficiency. So someone like Mr. Lefsih certainly understood the words being used in this form. It was for a broad population of people who don't -- necessarily haven't obviously gone to college or taken the courses that he has taken. The defense argued that the government is suggesting that this was specifically a test of his honesty. That's not what this is testing. The test is in a sense that you are expected to be honest and you are attesting to your honesty when you answer the questions. So in that sense it -- it is a test that he failed because he did not answer this question honestly. But, of course, that's not the purpose of the question, to try to catch people up and just see how they -- to see if they are being honest or not. The agency has a legitimate reason to ask for this information, because they have to make a determination of good moral character. That's why they ask for this information.

The defense argued that Mr. Lefsih make a mistake when he submitted the form too early, and therefore that -- the argument was that that shows that he's not perfect and that he made a similar type of mistake when he answered the question about citations incorrectly. No. His submission of the form early was calculated. He put an incorrect date on there. That was not the date he signed the form. Yet, it was the date that corresponded exactly to the three months before his five year eligibility, so he had filled out this form sometime prior to that date, and he put a later date on it because he knew -- he knew that he had to be within that 90 day period. So he -- and you heard him testify on the stand he understands the rules. He's very knowledgeable about this process. So he was -- he was in a hurry. That's ultimately the point I would want to leave you with here. He was in a hurry to become a citizen. He did not want to do or say anything during this process that would potentially slow it down. That's why he didn't disclose his traffic citations. And he did so knowingly. Ultimately you will have to decide whether Mr. Lefsih was credible when he was testifying. That's for you to decide. But I would ask you to consider his motives and not just his motive to become a citizen when he filled out the form but his motives now to avoid conviction, to avoid potentially having to go back to Algeria. Because we know that is the last thing that he wants. So, ladies and gentlemen, I would conclude by asking that you return a verdict of guilty as to all four counts. Thank you.

JURY INSTRUCTIONS

Ladies and gentlemen, after the closing arguments it's my turn to give you instructions on the law. This document right here will be with you in the jury room. It's called the Verdict. It's your answer to the questions. And along with it will be the indictment, which are the charges. As you know, there are four charges, and you will end the case by filling in this piece of paper here. It says, we the Jury find the defendant blank as to Count 1, 2, 3 and 4. And when you have reached a unanimous verdict as to each count, you will either write the word Guilty or the words Not Guilty in next to the blank space here. Then the foreperson will sign it and date it, and that will be the end of the case and you'll come back in here, and I will receive your Verdict, which will be sealed, and then I'll announce it in open court.

Now the four charges, one and three are similar and two and four are similar. And they have these elements. And the government has to prove this beyond a reasonable doubt. That's the standard of proof. You'll hear me say that during these instructions. In order to satisfy its burden of proof on Counts 1 and 3, the government must prove the following essential elements beyond a reasonable doubt. These are Counts 1 and 3. First, that the defendant made a false statement. Second, that the defendant was under oath when he made the statement. Third, that the defendant knew the statement was false at the time that he made it. And, fourth, that the statement was made in a case or proceeding or matter relating to and by virtue of the laws of the United States relating to naturalization, citizenship or the status of aliens. The materiality of the alleged false statement is not an element of this offense. A statement is made under oath if the defendant took an oath to testify truly before an agency authorized by law to administer oaths or if the defendant, under the penalty of perjury, subscribed as true, written information submitted to the agency. So if you sign under penalty of perjury, subscribed as true, written information submitted to the agency, then it is under oath.

With regard to Counts 2 and 4, in order to sustain its burden of proof on Counts 2 and 4, the government must prove the following essential elements beyond a reasonable doubt. First, that the defendant made a false statement. Next, that the defendant made the statement under oath or penalty of perjury. Third, that the defendant knew the statement was false at the time that he made it. Fourth, that the statement was material to the activities or decision making of the agency to whom the statement was made. And, fifth, that the statement was made in an application required by the immigration laws or regulations prescribed under the United States law. A statement is material if it has a natural tendency to influence agency action or is capable of influencing agency action. If a statement could have provoked governmental action it is material regardless of whether the agency actually relied upon it. A finding of materiality is not dependent upon whether the fact finder was actually influenced by the defendant's false statement.

Now you've heard all the evidence in the case as well as the arguments of the lawyers. It's my duty to give you these instructions. In a jury trial in effect there are two judges. My job, as I told you yesterday, is to preside over the trial. I don't have any position about the outcome of it. I'm like the referee or the umpire. You're the actual judges of the facts. You decide from the evidence what the facts are. In determining what actually happened in reaching your decision it's your sworn duty to follow the law. You must follow the law as it's presented to you. You have no right to disregard or give special attention to any part of it or to question the wisdom or correctness of the law. You must not substitute your own opinion of what the law is or ought to be. It's your duty to apply the law as The Court presents it to you, regardless of the consequences. It is also your duty to base your verdict solely upon the testimony and the evidence in the case without any prejudice or any sympathy. That's the promise that you made and the oath that you took before you were seated as a juror in this case, and the parties have the right to expect that from you.

It's your duty to deliberate on the facts and in so doing you must consider only the evidence. The term evidence includes the testimony of the witnesses and any exhibits and things that are admitted into the record. Remember that the statements. objections and arguments made by the lawyers are not evidence in the case. The lawyers have an important duty to point out those things that are most significant or most helpful to their position in the case and in so doing to call your attention to certain facts or inferences that might otherwise escape your notice. In the final analysis, however, it is your own recollection and your interpretation of the evidence that controls in the case. Put another way, what the lawyers say is not binding on you. As I said, if during the course of the trial I made any comments or asked any questions or made any rulings, you should not interpret from that that I have any position or opinion about the outcome of the case. I simply do not. So while you should consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and the exhibits as you feel are justified in the light of your common experience. In other words, you may make such deductions and reach such conclusions, which your reason and your common sense leads you to draw from the facts which have been established by the testimony and the evidence in the case. You may also consider either direct or circumstantial evidence. Direct evidence is testimony from a witness who asserts actual knowledge of a fact, such as am eyewitness. Circumstantial evidence is proof of a chain of facts or circumstances, indicating either the guilt or innocence of the defendant. The law does not make a distinction between the weight to be given to either direct or circumstantial evidence. It requires only that you weigh all of the evidence and be convinced of a defendant's guilt beyond a reasonable doubt before you may convict that person.

Now I have said you must consider all of the evidence.

This does not mean, however, that you must accept all the evidence as true or as accurate. You are the sole judge of the credibility or believability of each witness and the weight you want to give the testimony of that witness. In weighing the testimony of a witness you may consider that person's relationship to the government or to the defendant, that person's interest, if any, in the outcome of the case, a person's manner of testifying, the opportunity to observe or acquire knowledge about the facts that that person testifies to, a witness' candor, fairness and intelligence and the extent to which what the witness says has been either supported by or contradicted by other evidence that you believe in the case. In short, you may accept or reject the testimony of any witness in whole or in part. The weight of the evidence is not determined by the number of witnesses testifying to the existence or non-existence of some fact. A witness may be discredited or impeached by contradictory evidence or by showing that the witness has testified falsely about an important matter or by evidence that at some other time the witness has said or done something or has failed to say or do something which is inconsistent with the witness' present testimony.

A separate crime is charged against the defendant in each count of the indictment. Each offense and the evidence pertaining to it should be considered separately by you. The fact that you find the defendant guilty or not guilty of one offense should not control your verdict as to another offense you may be considering.

I caution you, ladies and gentlemen, that you are here to determine the guilt or innocence of the defendant from the evidence in this case. The defendant is not on trial for any other conduct or offense not alleged in the indictment. The matter of punishment that the law might provide for any offense is a matter left exclusively within the authority of The Court and should not be considered by you as the jury in any way when arriving at your impartial verdict. You will note that the indictment charges some things may have happened on or about a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged.

The word knowingly, as that term is used in these instructions, means that an act is done voluntarily and intentionally and not because of mistake or accident. The term willfully, as that term is used in the law, means that an act is committed voluntarily and purposely with a specific intent to do something the law forbids, that is to say with a bad purpose to disobey or disregard the law.

The indictment or charge against the defendant is not evidence of guilt. The defendant is presumed by the law to be innocent. The law does not require the Defendant to prove his innocence nor to produce any evidence at all. The government has the burden of proving a defendant guilty beyond a reasonable doubt, and if it fails to do this, you must find the defendant not guilty. While the government's burden of proof is a strict or heavy burden, it is not necessary that a defendant's guilt be proved beyond all possible doubt. What is required is that the government's proof exclude any reasonable doubt concerning the defendant's guilt. If you are convinced that the defendant has been proved guilty beyond a reasonable doubt as to any count it will be your duty to say so. If you are not so convinced, it will be your duty to say that.

Upon retiring to your jury room to begin your deliberations, you must select one of your group to be your foreperson. That person will preside over your deliberations and will be your spokesperson in court. The verdict must represent the collective judgment of the jury. In order to return a verdict it is necessary that each juror agree to it. Your verdict must be unanimous. It is your duty as jurors to consult with each other and to deliberate with one another with a view toward reaching an agreement if you can do so without compromise to your individual judgment. Each of you must decide the case for himself or herself, but you are to do so only after impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations do not hesitate to re-examine your own views and change your opinion if you are convinced it is in error. However you are not required to surrender your honest conviction solely because of the opinion of a fellow juror or for the mere purpose of being able to return a unanimous verdict.

Remember at all times that you are not partisans, meaning you don't have a side in the case. You're actually the judges. You're the judge of the facts, and your sole interest is to seek the truth from the evidence received at trial.

All right. With you in the jury room will be the verdict form and the indictment and the exhibits that have been offered. Let me see the lawyers up here briefly.

(Bench conference out of the hearing of the jury)

**THE COURT:** Are there any objections to the charge?

**MR. GOULIAN:** You instructed them on willfully. I didn't think that willfully was an element to any of the offenses.

**THE COURT:** Yeah, I just read that. Do you want me to take that out, disregard willfully?

**MR. GOULIAN:** I would, yes.

**THE COURT:** Okay. Anything else?

**MS. ARANEDA:** No.

**THE COURT:** Okay. Thank you.

(Bench conference concluded)

**THE COURT:** I gave you some brief instruction on the concept of willfully, but that's not an element of these offenses, only knowingly is, so disregard that.

Let me see, Mr. Miller, you're our alternate. Thank you for being here, and you won't have to go into the jury room because we have 12 jurors remaining, so I appreciate your service. And the jury can be taken to the jury room and begin their deliberations.

(Jury out at 4:46 p.m.)

**THE COURT:** We will be at ease awaiting the return of the verdict.

(Court recess 4:47 - 5:13 p.m.)

**THE COURT:** Let's see, who's the foreperson of the jury? You are, Mr. Knight?

**MR. KNIGHT:** Yes, sir.

**THE COURT:** If you'll give the Marshal the Verdict, please.

VERDICT

The Jury finds the defendant guilty of Counts 1, 2, 3, and 4. Thank you, ladies and gentlemen. That satisfies your service, and I appreciate your being here for the last two days. You were very conscientious and thorough, and you're excused at this point.

(Jury leaves the courtroom)

What does the government say? Do you want him to continue to be detained?

**MR. GOULIAN:** Yes, Your Honor. My understanding is that as a result of the conviction he is now deportable, and it is the intent of ICE to put an immigration detainer on him, on the defendant, so we would ask that he be continued in detention.

**THE COURT:** Okay. But his guidelines, do we know what they are going to be? Ms. Araneda you argue that appeal that his guidelines were pretty low?

**MS. ARANEDA:** That is correct, Your Honor.

**MR. GOULIAN:** I think it is likely to be zero to six months. So I mean the government has no objection to an expedited sentencing.

**THE COURT:** Okay. Well, let's do that. Let's order him scheduled for sentencing. This is -- when is Memorial Day? That's the 27th or 8th or 9th? I don't have a calendar. Is it the 30th?

**MR. GOULIAN:** I believe it's the 30th.

**THE COURT:** Well, let's schedule him for the 31st for a sentencing hearing. We will notify probation accordingly, and he will be continued in detention awaiting the imposition of sentence.

**MR. GOULIAN:** Thank you, Your Honor.

**THE COURT:** Thank you. You both did a good job. It was a difficult trial. I'm surprised the jury came back that quick, but it was a very well done case, so, thank you.

**MS. ARANEDA:** Thank you, Your Honor.

**MR. GOULIAN:** Thank you, Your Honor.

**THE COURT:** We'll be in recess.

(Court recessed 5:17 p.m.)

STATE OF NORTH CAROLINA )
) C-E-R-T-I-F-I-C-A-T-I-O-N
COUNTY OF PERQUIMANS )

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

*Sandra A. Graham, CVRM* *7/18/2016*

Sandra A. Graham, CVR-M July 18, 2016
Court Reporter & Notary Public
Notary Public Number: 19940140086